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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 946 and 980

**[Doc. No. AMS–FV–13–0068; FV13–946–3 IR]**

## Irish Potatoes Grown in Washington and Imported Potatoes; Modification of the Handling Regulations, Reporting Requirements, and Import Regulations for Red Types of Potatoes

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

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

**SUMMARY:** This rule exempts red types of potatoes from minimum quality, maturity, pack, marking, and inspection requirements of the Washington potato marketing order for the remainder of the 2013–2014 fiscal period and subsequent fiscal periods. The marketing order regulates the handling of Irish potatoes grown in Washington and is administered locally by the State of Washington Potato Committee (Committee). During the exemption period, reports will be required from handlers of red types of potatoes to obtain information necessary to administer the marketing order. As required under section 8e of the Agricultural Marketing Agreement Act of 1937, this action also exempts imported red-skinned, round type potatoes from minimum grade, size, quality, and maturity requirements. This rule is expected to reduce overall industry expenses and increase net returns to producers and handlers while giving the industry the opportunity to explore alternative marketing strategies.

**DATES:** Effective February 15, 2014; comments received by April 14, 2014 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.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made 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. 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.''

This interim rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including potatoes, are regulated under a Federal marketing order, the importation of these commodities into the United States is prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for domestically produced commodities.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866 and Executive Order 13563.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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 there from. A 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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulation issued under section 8e of the Act.

This rule exempts red types of potatoes from the order's handling regulations for the remainder of the 2013–2014 fiscal period and subsequent fiscal periods. This rule allows the Washington potato industry to market red types of potatoes without regard to the minimum quality, maturity, pack, marking, and inspection requirements currently prescribed under the order.

This rule also modifies the order's reporting requirements to require reports from handlers of red types of potatoes for the remainder of the 2013–2014 fiscal period and subsequent fiscal periods. By modifying the reporting requirements, the Committee can continue to obtain information necessary to administer the marketing order, including the collection of assessments, in the absence of inspection certificates and reports issued by the Federal State Inspection Service (FSIS). Assessments on all fresh

red type potatoes handled under the order will remain in effect during the exemption period.

The order authorizes the establishment of handling regulations for all varieties or varietal types of potatoes grown in the production area. These regulations can include minimum grade, size, quality, maturity, and inspection requirements. They can also provide for the size, capacity, weight, dimensions, pack, marking, or labeling of containers used in the handling of such potatoes. The order also allows such handling regulations to be modified, suspended, or terminated when recommended by the Committee and approved by the Secretary.

When handling regulations are in effect, regulated potatoes must be inspected and certified by FSIS. As authorized under the order, the Committee uses information included on FSIS inspection certificates as a basis for collecting assessments and compiling industry statistics. Because this action exempts red types of potatoes from FSIS inspection and certification, the industry must collect necessary information from an alternate source. Therefore, this action also modifies current reporting requirements to require handlers to submit reports to provide information on the volume of red types of potatoes handled for the fresh market during the exemption period.

The above-described authorities are found in §§ 946.51, 946.52, 946.60, and 946.70 of the order. Administrative rules and regulations issued under these authorities are found in §§ 946.143 and 946.336.

The Committee meets regularly to consider the effectiveness of regulatory requirements in place for Washington potatoes. These requirements are issued on a continuing basis and are subject to modification, suspension, or termination upon recommendation of the Committee and approval by USDA. Committee meetings are open to the public, and interested persons may express their views at these meetings. USDA reviews recommendations made by the Committee, along with any additional information submitted by the Committee and other available information, and determines whether such recommendations would tend to effectuate the declared policy of the Act.

On May 9, 2013, the Committee met to discuss the handling regulations and the mandatory inspection requirements in effect for Washington potatoes. The Committee considered whether a short-term exemption of red types of potatoes from regulation could be beneficial. The industry is concerned that the benefits of regulating the quality of Washington potatoes may be outweighed by the current cost of mandatory inspections.

After much consideration, on July 16, 2013, the Committee unanimously recommended temporarily exempting red types of potatoes from the handling regulations and modifying the reporting requirements for such potatoes. The temporary exemption was recommended for the duration of the current fiscal period so that the industry could evaluate the exemption's effects on the marketing of potatoes.

On December 10, 2013, the Committee again met to discuss the temporary exemption of red types of potatoes from the handling regulations. The Committee continued to believe that the exemption of red types of potatoes from handling regulations would reduce industry costs without negatively impacting the market. Upon further consideration, the Committee unanimously recommended exempting red types of potatoes from the handling regulations for the remainder of the current fiscal period and subsequent fiscal periods.

As a result of this exemption, red types of potatoes will not be subject to the minimum grade, size, quality, cleanness, maturity, pack, marking, and inspection requirements of the order for the remainder of the 2013–2014 fiscal period and subsequent fiscal periods. Also during this time, modified reporting requirements will be in effect to require handlers to submit reports of their shipments of fresh red types of potatoes to the Committee.

Historically, an objective of the order's handling regulations has been to ensure that only quality Washington potatoes enter the fresh market, thereby fostering consumer satisfaction and increasing sales and returns for producers. However, the Committee reported that the cost for inspections has recently increased. With potato prices at reportedly low levels in recent years, the Committee studied the possibility of reducing production costs by eliminating the mandatory inspection requirement.

In discussing the relative benefits of quality control during the Committee meeting, some individuals expressed concern that eliminating quality requirements could result in lower quality potatoes being shipped to the fresh market, thereby negatively affecting consumer demand. Others expressed concern that without minimum requirements the overall quality of potatoes could decline and the Washington potato industry could lose sales to other potato producing areas with mandatory quality and inspection requirements. While the industry recognizes that quality is an important factor for maintaining sales, the Committee believes the cost of mandatory inspections may exceed the benefits derived from the quality regulation of red types of potatoes.

The Committee believes that the exemption of red types of potatoes from handling regulations will also benefit the Washington potato industry. The Committee recommended that red types of potatoes be exempted from the regulations for the remainder of the current fiscal period and subsequent fiscal periods.

This rule modifies § 946.336 to exempt red types of potatoes from handling regulations for the remainder of the 2013–2014 fiscal period and subsequent fiscal periods. This rule does not restrict handlers from seeking inspection on a voluntary basis, if they so choose.

This action will result in a suspension of the monthly FSIS inspection reports for red types of potatoes. The Committee has utilized these monthly reports, compiled by FSIS from inspection certificates, as a basis for collecting assessments. During the exemption period, handlers will be required to report fresh shipments of red types of potatoes directly to the Committee on an existing form that is being modified for this purpose. This information will allow the Committee to collect assessments and compile industry statistics.

Therefore, this rule modifies § 946.143 to require that each person handling red types of potatoes submit a monthly report to the Committee. The reporting requirement was originally established in 2010 to facilitate the exemption of russet type potatoes from the handling regulations. It will be modified to include the collection of information for red types of potatoes.

Authorization to assess handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The modified reporting requirement will facilitate the Committee's ability to continue collecting the funds needed to cover necessary program costs.

Section 8e of the Act provides that when certain domestically produced commodities, including potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as the domestically produced product. Minimum grade, size, quality, and maturity requirements for potatoes imported into the United States are currently in effect under the import

regulations. The import regulations distinguish between each of the three major types of potatoes handled domestically; (1) red-skinned, round type potatoes, (2) all other round type potatoes, and (3) long type potatoes.

Section 980.1(a)(2)(i) of the vegetable import regulations specifies that, during each month of the marketing year, imports of red-skinned, round type potatoes are in most direct competition with potatoes of the same type produced in the area covered by the order. Further, § 980.1(b)(1) provides that, through the entire year, the grade, size, quality, and maturity requirements of the order applicable to potatoes of the red-skinned, round type shall be the respective grade, size, quality, and maturity requirements for all imported red-skinned, round type potatoes. As such, the exemption from minimum grade, size, quality, and maturity requirements for domestic potatoes covered by the order also exempts red-skinned, round type potato varieties that are imported into the U.S. from grade, size, quality, and maturity requirements.

Prior to this action, red-skinned, round type potatoes imported into the U.S. must be U.S. No. 2 or better grade and meet a minimum diameter of 1⅞ inches. In addition, red-skinned, round type potatoes may be ¾ inch minimum diameter, if such imported potatoes otherwise met the requirements of the U.S. No. 1 grade. Lastly, imported red-skinned, round type potatoes could not be more than ''moderately skinned'' as defined by the U.S. Standards for Grades of Potatoes.

As a result of the exemption of red types of potatoes from the order's handling regulations, and pursuant to the Act, this rule also modifies § 980.1(b)(1) to exempt imported red-skinned, round types of potatoes from the import regulations. However, this rule does not restrict importers from having their potatoes inspected or from meeting minimum grade, size, quality, or maturity requirements on a voluntary basis.

**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 action 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 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)

For 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 2011–2012 was $7.90 per hundredweight. Taking the 2011–2012 shipments of fresh potatoes in the marketing order area (11,018,670 hundredweight), multiplying it by the average producer price for Washington potatoes, $7.90, and then dividing it by the number of Washington potato producers (267) equates to an average gross annual revenue per producer of approximately $326,021. In view of the foregoing, the majority of Washington potato handlers and producers may be classified as small entities.

Information from the Foreign Agricultural Service, USDA, indicates that the dollar value of imported fresh potatoes averaged $128.962 million from 2008 to 2012, ranging from a low of approximately $106.502 million in 2012 to a high of approximately $155.358 million in 2008. Taking the average dollar value of imported fresh potatoes, $128.962 million, and dividing it by the number of potato importers, 571, results in average annual receipts per importer of approximately $226,000. Since this below the SBA definition of small business (less than $7 million in annual sales), most importers may be classified as small entities.

This rule exempts red types of potatoes from the handling regulations and modifies the reporting for the remainder of the 2013–2014 fiscal period and subsequent fiscal periods. The industry believes that the increased cost of mandatory inspections outweigh the benefits derived from quality regulation. This change is expected to reduce overall industry expenses and provide the industry with the opportunity to explore alternative marketing strategies.

As stated previously, the authority for regulation is provided in § 946.52 of the order, while authority for reports and records is provided in § 946.70. In addition, the handling regulations are specified under § 946.336 of the order's administrative rules and regulations, and reporting requirements are specified under § 946.143.

The Committee does not anticipate that this rule will negatively impact small businesses. This rule will exempt red types of potatoes from minimum quality, maturity, pack, marking, and inspection requirements for the current fiscal period and subsequent fiscal periods. Though inspections are not mandatory for such potatoes during the exemption period, handlers may choose to have their potatoes inspected. Handlers are thus able to control costs based on the demands of their customers.

The Committee discussed alternatives to this recommendation, including making no changes to the regulations. The Committee also considered different types of inspection programs, exempting all types of potatoes from handling regulations, and exempting red types from regulation temporarily instead of indefinitely. However, the Committee believes that the Washington potato industry will benefit more from the indefinite exemption of red types of potatoes from handling regulations.

The Committee identified no other alternatives to requiring handlers to report fresh market shipments of red types of potatoes. This information is necessary to administer the program, including the collection of assessments.

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, Generic Vegetable and Specialty Crops.

This rule requires the submission of a monthly handler report for fresh red types of potatoes handled during the exemption period. This rule modifies the Russet Fresh Potato Report established for russet type potatoes to include red types of potatoes during the period those types of potatoes are exempted from regulation. The modified Self-Reporting Potato Form will provide the Committee with information necessary to track shipments and collect

assessments. AMS has submitted the modified form and a Justification of Change to OMB for approval.

While this rule requires a reporting requirement for red types of potatoes, their exemption from handling regulations also eliminates the more frequent reporting requirements imposed under the order's special purpose shipment exemptions (§ 946.336(d) and (e)). Under these paragraphs, handlers are required to provide detailed reports whenever they divert regulated potatoes for livestock feed, charity, seed, prepeeling, processing, grading and storing in specified counties in Oregon, and experimentation.

Therefore, any additional reporting or recordkeeping requirements on either small or large handlers of red types of potatoes are expected to be offset by the elimination of the other reporting requirements currently in effect. In addition, the exemption from handling regulations and inspection requirements for red types of potatoes is expected to reduce industry expenses.

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.

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

The Committee's meetings were widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations. Like all Committee meetings, the May 9, July 16, and December 10, 2013, meetings were public meetings. All entities, both large and small, were able to express views on this issue. Further, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

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.

This interim rule invites comments on the exemption from handling regulations and the modification of the reporting requirements for red types of potatoes. Any comments received will be considered prior to finalization of this rule.

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

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim rule.

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) Any changes resulting from this rule should be effective as soon as practicable because the shipping season for Washington red types of potatoes began in July of 2013; (2) the Committee discussed and unanimously recommended these changes at public meetings and all interested parties had an opportunity to provide input; (3) potato handlers are aware of this action and want to take advantage of relaxation of the handling regulations as soon as possible; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

**List of Subjects**

*7 CFR Part 946*

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

*7 CFR Part 980*

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

For the reasons set forth in the preamble, 7 CFR parts 946 and 980 are amended as follows:

■ 1. The authority citation for 7 CFR parts 946 and 980 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

## PART 946—IRISH POTATOES GROWN IN WASHINGTON

■ 2. Section 946.143 is revised to read as follows:

### § 946.143 Assessment reports.

During the period that russet, red, yellow fleshed, and white types of potatoes are exempt from handling requirements under § 946.336, each person handling russet, red, yellow fleshed, and white types of potatoes shall submit a monthly report to the Committee by the 10th day of the month following the month such potatoes are handled. Each assessment report shall contain the following information:

(a) The name and address of the handler;

(b) The date and quantity of russet, red, yellow fleshed, and white types of potatoes handled;

(c) The assessment payment due; and

(d) Other information as may be requested by the Committee.

■ 3. The introductory text of § 946.336 is revised to read as follows:

### § 946.336 Handling regulation.

No person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c), and (g) of this section or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section, except that shipments of the blue or purple flesh varieties of potatoes shall be exempt from both this handling regulation and the assessment requirements specified in § 946.41: *Provided,* That russet type potatoes shall be exempt from the requirements of paragraphs (a), (b), (c), (e), and (g) of this section: *Provided further,* That, from October 24, 2013, through June 30, 2014, yellow fleshed and white types of potatoes shall be exempt from the requirements of paragraphs (a), (b), (c), (e), and (g) of this section: *Provided further,* That, effective February 15, 2014, red types of potatoes shall be exempt from the requirements of paragraphs (a), (b), (c), (e), and (g) of this section.

* * * * *

## PART 980—VEGETABLES; IMPORT REGULATIONS

■ 4. In § 980.1, paragraph (b) is revised to read as follows:

### § 980.1 Import regulations; Irish potatoes.

* * * * *

(b) Grade, size, quality, and maturity requirements. On and after the effective date hereof importation of Irish potatoes, except certified seed potatoes and red skinned, round types of potatoes, shall be prohibited unless they comply with the following requirements.

(1) Through the entire year, the grade, size, quality, and maturity requirements of Area II, Colorado (San Luis Valley) covered by Marketing Order No. 948, as amended (part 948 of this chapter), applicable to potatoes of the round type, other than red-skinned varieties, shall

be the respective grade, size, quality, and maturity requirements for imports of all other round type potatoes.

(2) Through the entire year the grade, size, quality, and maturity requirements of Marketing Order 945, as amended (part 945 of this chapter) applicable to potatoes of all long types shall be the respective grade, size, quality, and maturity requirements for imported potatoes of all long types.

(3) The grade, size, quality, and maturity requirements as provided for in this paragraph shall apply to imports of similar types of potatoes, unless otherwise ordered, on and after the effective date of the applicable domestic regulation or amendment thereto, as provided in this paragraph or 3 days following publication of such regulation or amendment in the **Federal Register**, whichever is later.

* * * * *

Dated: February 6, 2014.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2014–03043 Filed 2–11–14; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 121

**[Docket No. FAA–2012–0929; Amdt. No. 121–369]**

**RIN 2120–AJ17**

## Prohibition on Personal Use of Electronic Devices on the Flight Deck

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

**ACTION:** Final rule.

**SUMMARY:** This final rule will prohibit flightcrew members in operations under part 121 from using a personal wireless communications device or laptop computer for personal use while at their duty station on the flight deck while the aircraft is being operated. This rule, which conforms FAA regulations with legislation, is intended to ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck or a loss of situational awareness due to attention to non-essential tasks.

**DATES:** Effective April 14, 2014.

**ADDRESSES:** For information on where to obtain copies of rulemaking documents and other information related to this final rule, see the ''How To Obtain Additional Information'' section of this document.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this final rule, contact Nancy Lauck Claussen, Air Transportation Division (AFS–200), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8166; email *Nancy.L.Claussen@faa.gov*.

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

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security, and 49 U.S.C. 44732, which prohibits the personal use of electronic devices on the flight deck by flightcrew members. Additionally, this rule fulfills a statutory mandate found in Section 307 of Public Law 112–95, The Federal Aviation Administration Modernization and Reform Act of 2012.

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### I. Overview of Final Rule

The Federal Aviation Administration (FAA) Modernization and Reform Act of 2012 (the Act) was enacted on February 14, 2012. Section 307 of the Act, Prohibition on Personal Use of Electronic Devices on the Flight Deck, makes it ''unlawful for a flight crewmember of an aircraft used to provide air transportation under part 121 of title 14, Code of Federal Regulations, to use a personal wireless communications device or laptop computer while at the flight crewmember's duty station on the flight deck of such an aircraft while the aircraft is being operated.'' The legislation also states that this prohibition does not apply to the use of a personal wireless communications device or laptop computer for a purpose directly related to operation of the aircraft, or for emergency, safety-related, or employment-related communications, in accordance with procedures established by the air carrier and the FAA.

The FAA is amending part 121 to conform to this legislation. The FAA is amending § 121.542 to add language to prohibit flightcrew members operating under part 121 from using a personal wireless communications device or a laptop computer for personal use while at their duty station on the flight deck while the aircraft is being operated. The amended regulatory language defines what is considered to be a personal wireless communications device. The regulatory language also clarifies that the prohibition on use of a personal wireless communications device or laptop computer does not apply to the use of a personal wireless communications device or laptop computer for a purpose directly related to the operation of the aircraft, or for emergency, safety-related, or employment-related communications, in accordance with procedures established by the air carrier and approved by the FAA. The amended regulatory language also uses the term ''flight crewmember'' to conform with other paragraphs in amended § 121.542. However, the preamble to this final rule, as well as all recent FAA rulemakings, uses the term ''flightcrew member'' to conform with the definition contained in § 1.1; therefore, these terms are used interchangeably.

## II. Background

### *A. Related Rule*

In 1981, the FAA published the Elimination of Duties and Activities of Flight Crewmembers Not Required for the Safe Operation of Aircraft Final Rule.[1] This rule, better known as the ''Sterile Cockpit'' rule, required air carriers operating under parts 121 and 135, as well as flightcrew members in those operations, to ensure that the environment on the flight deck was free from potentially dangerous distractions. The 1981 final rule states that air carriers shall not require their flightcrew members to perform non-safety related duties during critical phases of flight and that flightcrew members shall not conduct non-safety related activities which could cause distractions on the flight deck during critical phases of flight.

The 1981 rule further states that the pilot-in-command (PIC) shall not permit any activity during a critical phase of flight which would distract flightcrew members from the performance of their duties. This in effect extends the sterile cockpit provisions to other crewmembers, such as flight attendants. The 1981 rule also defines the critical phases of flight as all ground operations involving taxi, take-off and landing, and all other flight operations conducted below 10,000 feet, except cruise flight.

The personal use of personal wireless communications devices and laptop computers for non-safety related activities is prohibited by the broad restrictions in the 1981 ''Sterile Cockpit'' rule during ground operations involving taxi, take-off and landing, and all other flight operations conducted below 10,000 feet. This final rule extends the prohibition on personal use of personal wireless communications devices and laptop computers to all phases of flight.

### *B. Statement of the Problem*

Several incidents involving a breakdown of cockpit discipline prompted Congress to address this issue via legislation. In one instance, two pilots were using their personal laptop computers during cruise flight and lost situational awareness, leading to a 150 mile fly-by of their destination. In another instance, a pilot sent a text message on her personal cell phone during the taxi phase of the flight after the aircraft pushed back from the gate and before the take-off sequence. These incidents illustrate the potential for such devices to create a hazardous distraction during critical phases of flight.

This rule will ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck and do not contribute to a loss of situational awareness due to attention to non-essential activities, as highlighted by these incidents. See 78 FR 2912 (Jan. 15, 2013).

### *C. National Transportation Safety Board Recommendations*

In its recommendations to the FAA regarding the Colgan accident in 2009, the National Transportation Safety Board (NTSB) concluded that because of the continuing number of accidents involving a breakdown in sterile cockpit discipline, collaborative action by the FAA and the aviation industry to address this issue was warranted. Therefore, the NTSB recommended (A–10–30) that the FAA require all part 121, 135, and 91 subpart K operators to incorporate explicit guidance to pilots, including checklist reminders as appropriate, prohibiting the use of personal portable electronic devices on the flight deck.[2]

In response to NTSB recommendation A–10–30, the FAA issued Information for Operators (InFO) 10003, Cockpit Distractions, on April 26, 2010. The NTSB responded that this action did not fully address the recommendation because the InFO was advisory only.[3] With this final rulemaking, the FAA will amend current § 121.542 to prohibit the use of personal wireless communications devices and laptop computers by flightcrew members, for personal use, while the aircraft is being operated.

On August 26, 2011, a Eurocopter AS350 B2 helicopter, operating under part 135, impacted terrain following an engine failure near the airport in Mosby, Missouri. The helicopter experienced fuel exhaustion because the pilot departed without ensuring that the helicopter was adequately fueled. The investigation determined that the pilot engaged in frequent personal texting, both before and during the accident flight. The pilot, flight nurse, flight paramedic, and patient were killed (CEN11FA599). As a result of its investigation, the NTSB issued the following recommendations:

- Prohibit flight crewmembers in 14 *Code of Federal Regulations* Part 135 and 91 subpart K operations from using a portable electronic device for nonoperational use while at their duty station on the flight deck while the aircraft is being operated. (A–13–7)
- Require all 14 *Code of Federal Regulations* Part 121, 135, and 91 subpart K operators to incorporate into their initial and recurrent pilot training programs information on the detrimental effects that distraction due to the nonoperational use of portable electronic devices can have on performance of safety-critical ground and flight operations. (A–13–8)
- Require all 14 *Code of Federal Regulations* Part 121, 135, and 91 subpart K operators to review their respective general operations manuals to ensure that procedures are in place that prohibit the nonoperational use of portable electronic devices by operational personnel while in flight and during safety-critical preparatory and planning activities on the ground in advance of flight. (A–13–9)

With this final rule, the FAA is establishing an operational prohibition regarding the personal use of personal wireless communications devices and laptop computers that responds to these NTSB recommendations regarding part 121 operations.

### *D. Summary of the Notice of Proposed Rulemaking*

On January 15, 2013, the FAA published a Notice of Proposed Rulemaking (NPRM) to amend part 121 to conform to the FAA Modernization and Reform Act of 2012. In the NPRM the FAA proposed to amend 14 CFR 121.542 to add language to prohibit flightcrew members operating under part 121 from using a personal wireless communications device or a laptop computer for personal use while at their duty station on the flight deck while the aircraft is being operated. The proposed regulatory language clarified that the prohibition on use of a personal wireless communications device or laptop computer did not apply to the use of a personal wireless communications device or laptop computer for a purpose directly related to the operation of the aircraft, or for emergency, safety-related, or employment-related communications, in accordance with procedures established by the air carrier and approved by the FAA. The comment period for the NPRM closed on March 18, 2013.

### *E. General Overview of Comments*

The FAA received 63 comments in response to the NPRM. Commenters included Delta Airlines (Delta), Airline

[1] 46 FR 5500 (Jan. 19, 1981).

[2] See *http://www.ntsb.gov/doclib/reports/2010/aar1001.pdf.*

[3] The NTSB closed recommendation A–10–30 as unacceptable on June 14, 2012. Summaries of the NTSB and FAA letters on A–10–30 can be found at *http://www.ntsb.gov/SafetyRecs/Private/history.aspx?rec=A-10-030&addressee=FAA.*

Pilots Association, International (ALPA), Rockwell Collins, the NTSB, and individuals. Delta, Rockwell Collins, the NTSB and many individuals generally supported the rule and stated that it would have a positive effect on safety. Several of these commenters suggested edits to the final rule requirements to clarify the proposed requirements, to add additional limitations to the proposed requirements or to broaden the scope of the requirements to cover operations under part 135 and part 91 subpart K. ALPA and many individuals opposed the rule. They generally stated that the rule was unnecessary, unenforceable and may have a negative effect on safety.

## III. Discussion of Public Comments and Final Rule

### Expand the Scope of the Final Rule

The NTSB commented that the FAA should expand the proposed rule to include part 135 and part 91 subpart K operations. Expanding the final rule to include part 135 and part 91 subpart K operations is outside the scope of the final rule, as the NPRM only discussed and solicited comments on applying this prohibition to part 121 operations. Additionally, the provisions of the final rule are consistent with the Congressional mandate to prevent distractions to flightcrew members in operations under part 121. However, the FAA may address part 135 and part 91 subpart K operations in future rulemaking.

One individual commenter noted that the provisions in the final rule should apply to all required crewmembers on the aircraft, including flight attendants, and should also apply to aircraft dispatchers while on duty. Expanding the final rule to include flight attendants and aircraft dispatchers is outside the scope of the final rule, as the NPRM only discussed and solicited comments on applying this prohibition to flightcrew members while at their duty station on the flight deck. Additionally, the provisions of the rule are consistent with the Congressional mandate to prevent distractions to flightcrew members.

### Definition of Personal Wireless Communications Device

Delta commented in support of the proposed rule and noted that they currently have company policies similar to the proposed regulations. Delta also suggested that the FAA add language to the final rule to state that the PIC may allow the use of a personal electronic device by individuals who are occupying the flight deck jumpseat. Delta also suggested that the FAA replace the term ''personal wireless communications device'' with the term ''mobile wireless communications device.'' Delta noted that the word ''personal'' implies that these devices are owned by the pilot and wanted it to be clear that the rule should include any mobile wireless communications device being used for personal purposes, including company provided devices.

The FAA clarifies that the prohibition in the final rule only extends to crewmembers at a flightcrew member duty station; therefore, the prohibition does not apply to a person occupying the flight deck jumpseat. Additionally, the provisions of the final rule do not require an ''ownership'' test regarding the laptop computer or personal wireless communications device. These devices can be owned by the air carrier or the flightcrew member. The provisions of the final rule require a ''use'' test. These devices (regardless of who owns them) may not be used for personal use (e.g. personal communications, personal emails, leisure activities, etc.) while the flightcrew member is at his or her duty station while the aircraft is being operated. In the final rule, the FAA has amended the regulation to include the statutory definition for the term ''personal wireless communications devices.''

### Increased Restrictions

One individual commenter suggested that the prohibition on the personal use of these devices commence when the pilot first enters the flight deck prior to the flight, instead of at taxi, as proposed in the NPRM. The FAA has determined that the proposed operational timeframe for this prohibition, commencing at taxi and ending when the aircraft is parked at the gate at the end of the flight segment, maintains an appropriate level of safety because it reflects the current provisions in the ''sterile cockpit'' rule. The FAA will maintain this requirement in the final rule.

One individual pilot generally supported the final rule but offered an alternative that would be more restrictive than the proposed rule. This individual recommended that the FAA extend the ''sterile cockpit'' prohibitions to cover the entire flight, including operations above 10,000 feet. Conversely, other pilots noted that for decades, pilots have stayed mentally engaged and active during long flights with newspapers, magazines, books, and crosswords. These commenters noted that these cruise activities enable flightcrew members to address boredom and fatigue. Additionally, these commenters noted that now newspapers, magazines, books, and crosswords are replaced by e-readers and tablets. These commenters reiterated that flightcrew members are able to manage themselves and their flight activities in a professional manner. Several commenters also cited safety concerns regarding pilots who may become bored, lethargic, inattentive and fatigued without the ability to engage in the personal use of personal electronic devices.

The FAA notes that activities that promote mental engagement during operations at cruise altitude have a benefit of keeping a pilot engaged and alert. However, as discussed in the NPRM, there is a difference in the potential for certain activities to negatively impact a pilot's situational awareness.

The NPRM cited a study [4] that noted that the high fidelity attributes of certain displays could be a causal factor that amplified the likelihood of display induced attentional tunneling of pilots. The study also noted that ''realistic 3D displays . . . tend to become an attention sink.'' Additionally, the study notes that ''. . . attentional tunneling would operate to engage pilots' attention on these displays more than when situation and guidance information was presented . . . in a less compelling format.'' It is this potential safety risk that is addressed by the requirements in the final rule.

One individual commenter suggested that the limitation regarding the approved operational use of a personal electronic device apply to only one pilot at a time during cruise flight to ensure that one pilot is always able to focus on the flight deck displays and is able to maintain situational awareness. The FAA notes that this proposal only affects ''personal use'' of personal wireless communications devices and laptop computers. FAA approved air carrier programs regarding ''approved operational use'' (e.g. electronic flight bags (EFB), digitized charts or manuals) of personal wireless communications devices and laptop computers are beyond the scope of this proposal.

### Fewer Restrictions

A pilot commented that the FAA should limit the prohibition on personal use of these devices to critical phases of flight. The FAA notes that the provisions of current § 121.542 already

[4] Wickens, C.D., Alexander, A.L. Attentional tunneling and task management in synthetic vision displays. *The International Journal of Aviation Psychology,* 19(3), 182–199 (2009).

prohibit any activity during a critical phase of flight which could distract any flightcrew member from the performance of his or her duties or which could interfere in any way with the proper conduct of those duties.

Another pilot commented that flightcrew members should be able to use any personal electronic device, as long as the purpose is ''aviation related'', such as calling dispatch or maintenance to update operational or weather information or to receive the latest radar images to ensure a safe flight path on departure.

The provisions of the final rule allow those ''aviation related'' activities as long as they are in accordance with FAA approved air carrier procedures. It is not the FAA's intent to limit the use of personal wireless communications devices and laptop computers on the flight deck, as long as those devices support safe operation of the aircraft. The FAA reiterates that activities outside of an air carrier's standard operating procedures that may seem innocuous, such as making phone calls or texting, can create a hazardous distraction during critical phases of flight. Additionally, as stated in the NPRM, receiving radar images on personal wireless communications devices can cause flightcrew members to lose situational awareness when a personal electronic device used on the flight deck is inconsistent with the type certified flight deck design philosophy. This inconsistency could provide distraction, confusion, and ultimately contribute to a loss of situational awareness.

Another commenter suggested that the final rule should allow one pilot to be able to use a portable electronic device for personal use, as long as the other pilot is not using a portable electronic device for personal use. The FAA notes that the Act extends the limit to both pilots at all times ''while at the flight crewmember's duty station on the flight deck while the aircraft is being operated.''

Current Rules Are Sufficient

Many individual commenters noted that the current ''sterile cockpit'' rule should already be sufficient and that the additional provisions of this rule are not necessary. The FAA notes that this final rule is responsive to the legislative mandate in Section 307 of the Act, Prohibition on Personal Use of Electronic Devices on the Flight Deck, which exceeds the current requirements in § 121.542 (i.e. the ''sterile cockpit'' rule). Section 307 makes it ''unlawful for a flight crewmember of an aircraft used to provide air transportation under part 121 of title 14, Code of Federal Regulations, to use a personal wireless communications device or laptop computer while at the flight crewmember's duty station on the flight deck of such an aircraft while the aircraft is being operated.''

Pilot-In-Command Authority

ALPA noted that individual airlines must retain the ability to define the appropriate use of such devices, tailored to their overall operations. ALPA added that every flight presents a unique set of challenges that must be addressed by professional flightcrew members. ALPA further noted that in the event of an inflight emergency or other abnormal situation, PICs must retain the authority to determine how and when to use equipment on board the aircraft.

The FAA notes that the final rule allows air carriers to determine operational requirements and procedures, subject to approval by the FAA. Also, as stated by another individual commenter, this regulation in no way impedes the function of the flightcrew members since the rule does not apply to the use of a personal wireless communication device for a purpose that is directly related to the operation of the aircraft, for emergency and safety-related concerns, in accordance with FAA approved air carrier procedures. The FAA clarifies, in response to ALPA's concern, that the provisions of § 91.3, Responsibility and authority of the pilot in command, remain unchanged. The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft and in an in-flight emergency requiring immediate action, the PIC may deviate from any rule of this part to the extent required to meet that emergency.

Enforcement

Several individual commenters suggested that all personal wireless communications devices and laptop computers that are used for approved operational use should be provided by the air carrier, so the air carrier could download history, monitor use or block access to certain material. These commenters noted that this would help to ensure that the device would be used by the flightcrew member only for approved operational procedures and would assist in enforcement of the rule. Several other commenters generally noted that it would be difficult for the FAA to enforce the provisions of this rule.

Requiring air carriers to provide all personal wireless communications devices or laptop computers that are approved for operational use is not necessary for safety. In addition, this is not necessary for enforcing the provisions of the final rule.

The final rule is intended to ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck or a loss of situational awareness due to attention to non-essential tasks. The safety provisions in the final rule address ''use''. The ''ownership'' of the personal wireless communications device or laptop computer is not important.

Additionally, when the FAA published the proposed rule that established the ''sterile cockpit'' provisions in 1980, the agency received several similar comments that the provisions of that rule would be difficult to enforce. The FAA responds to current comments in the same way the FAA responded to the comments for the ''sterile cockpit'' final rule (46 FR 5501). In that final rule, the FAA generally responded that the FAA does not agree that the rule is too difficult to enforce. The FAA stated that principal operations inspectors will assure air carrier compliance through review of manuals and procedures. Individual compliance will be assured through en route surveillance as in the past. The FAA's position remains the same and violations of this rule will be pursued similarly as those of any other rule.

Inhibit Innovation

Several individual commenters noted that the rule would impede the use of innovation and technology by prohibiting the use of all electronic devices on the flight deck. Several commenters were concerned that this rule would affect innovations in the use of EFB and use of similar technology on the flight deck. These commenters noted that it was important to allow air carriers and crewmembers to take advantage of this new technology, as deemed appropriate, to increase operational efficiency and safety.

As stated previously, the FAA encourages the use of new electronic technologies that as stated by commenters, will allow air carriers to ''. . . . take advantage of this new technology as deemed appropriate to increase operational efficiency and safety.'' However, due to potential hazards to safe operation of the aircraft, the FAA carefully regulates the use of EFB hardware and software by crewmembers through FAA approval of air carrier EFB programs. The prohibitions in the final rule only extend to the personal use of such devices when the device, software, and

procedures are not approved by the FAA.

Prohibited Devices

Several commenters asked if the limitations in the rule extended to specific devices, such as iPods, used to listen to music. As stated in the NPRM, Section 307 of the Act defines ''personal wireless communications device'' as a device through which personal wireless services (as defined in Section 332(c)(7)(C)(i) of the Communications Act of 1934) are transmitted.[5] The Communications Act of 1934 states that personal wireless services means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access service.

In general, wireless telecommunications is the transfer of information between two or more points that are not physically connected. In the final rule, the FAA retains the same broad category of included devices because a list of specific devices would ignore the reality of evolving technology. This broad category includes, but is not limited to, devices such as cell phones, smartphones, personal digital assistants, tablets, e-readers, some (but not all) gaming systems, iPods and MP3 players, as well as netbooks and notebook computers.

Evolving technology makes it difficult to develop an inclusive list of devices that are addressed by the provisions of the final rule. The FAA notes that the final rule establishes a clear definition of personal wireless communications devices. The provisions of the final rule do not prohibit the use of devices that do not meet the definition of personal wireless communications devices.

Interference With Aircraft Systems

Several commenters supported the proposed rule and noted that the indiscriminate use of personal wireless communications devices and laptop computers by flightcrew members has the potential to interfere with communications systems on the airplane. The FAA notes that the potential for electromagnetic interference on the flight deck is beyond the scope of this rulemaking. This rulemaking is intended to ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck or a loss of situational awareness due to attention to non-essential tasks.

*A. Requirements*

The requirements in the final rule prohibit the personal use of a personal wireless communications device or laptop computer while a flightcrew member is at his or her duty station during all ground operations involving taxi, takeoff and landing, and all other flight operations. The final rule does not prohibit the use of personal wireless communications devices or laptop computers if the purpose is directly related to operation of the aircraft, or for emergency, safety-related, or employment-related communications and the use is in accordance with air carrier procedures approved by the Administrator.

The FAA clarifies that ''emergency'' communications are those related to the safe operation of the aircraft and its occupants, not a flightcrew member's personal emergency. Additionally, the FAA clarifies that ''employment-related'' communications are not at the discretion of the pilot, but are part of FAA approved operational procedures regarding the use of personal wireless communications devices or laptop computers. For example, in the previously noted situation with the pilots who became distracted when using personal laptop computers while discussing the air carrier's flight scheduling software, the flight schedules may have been ''employment-related,'' but the personal use of laptop computers during the discussion was not part of FAA approved operational procedures and will be prohibited by the final rule.

*B. Current Air Carrier Programs*

Several air carriers currently have FAA approved programs or are in the process of developing programs for FAA approval where laptop computers and personal wireless communications devices, such as tablets, are used by flightcrew members for work-related activities during flight operations. In some cases, air carriers own the laptop computers and/or personal wireless communications devices used by flightcrew members. In other cases, flightcrew members own the laptop computers and/or personal wireless communications devices. The FAA clarifies that the provisions in the final rule do not affect these FAA approved programs.

*C. Operational Timeframes for Prohibition*

Section 307 of the Act states that it is unlawful to use a device for personal use while an aircraft is being operated. The meaning of an ''aircraft being operated'' as it pertains to some FAA regulations is very broad, to include being parked at the gate while passengers are boarding. The FAA clarifies that for the purposes of this rule, the meaning of an ''aircraft being operated'' mirrors the definition of ''flight time'' in 14 CFR 1.1. Therefore, the prohibition on the personal use of laptop computers and personal wireless communications devices commences at taxi (movement of the aircraft under its own power) and ends when the aircraft is parked at the gate at the end of the flight segment.

## IV. Regulatory Notices and Analyses

*A. Regulatory Evaluation*

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

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

The FAA Modernization and Reform Act of 2012, enacted on February 14, 2012, includes Section 307, Prohibition on Personal Use of Electronic Devices on the Flight Deck. The FAA is

[5] *See* 47 U.S.C. 332(c)(7)(C)(i).

amending part 121 to conform to this legislation. The final rule will prohibit flightcrew members in operations under part 121 from using a personal wireless communications device or laptop computer for personal use while at their duty station on the flight deck while the aircraft is being operated. This final rule will ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck and do not contribute to a loss of situational awareness due to attention to non-essential activities. The FAA expects that this final rule reflects current sterile cockpit operating procedures and therefore does not impose more than a minimum cost on any regulated entity.

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

*B. Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA Modernization and Reform Act of 2012, enacted on February 14, 2012, includes Section 307, Prohibition on Personal Use of Electronic Devices on the Flight Deck. The FAA is amending part 121 to conform to this legislation. The final rule will prohibit flightcrew members in operations under part 121 from using a personal wireless communications device or laptop computer for personal use while at their duty station on the flight deck while the aircraft is being operated. This rule is intended to ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck and do not contribute to a loss of situational awareness due to attention to non-essential activities. While this final rule affects small entities, it merely revises existing FAA rules and does not impose any cost on any regulated entity.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b) the head of the FAA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

*C. International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and has determined that the objective is to ensure aviation safety thus is not an unnecessary obstacle.

*D. Unfunded Mandates Assessment*

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

*E. Paperwork Reduction Act*

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

*F. International Compatibility and Cooperation*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

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

*G. Environmental Analysis*

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

**V. Executive Order Determinations**

*A. Executive Order 12866 and 13563*

See the ''Regulatory Evaluation'' discussion in the ''Regulatory Notices and Analyses'' section elsewhere in this preamble.

*B. Executive Order 13132, Federalism*

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

power and responsibilities among the various levels of government, and, therefore, will not have Federalism implications.

*C. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use*

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

**VI. How To Obtain Additional Information**

*A. Rulemaking Documents*

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

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or
3. Access the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/*

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

*B. Comments Submitted to the Docket*

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's 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.).

*C. Small Business Regulatory Enforcement Fairness Act*

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

**List of Subjects in 14 CFR Part 121**

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

**The Amendment**

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

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

■ 1. The authority citation for part 121 is revised to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44732, 46105; Pub. L. 112–95, 126 Stat. 62 (49 U.S.C. 44732 note).

■ 2. Amend § 121.542 by adding paragraph (d) to read as follows:

**§ 121.542 Flight crewmember duties.**

* * * * *

(d) During all flight time as defined in 14 CFR 1.1, no flight crewmember may use, nor may any pilot in command permit the use of, a personal wireless communications device (as defined in 49 U.S.C. 44732(d)) or laptop computer while at a flight crewmember duty station unless the purpose is directly related to operation of the aircraft, or for emergency, safety-related, or employment-related communications, in accordance with air carrier procedures approved by the Administrator.

Issued under the authority provided by 49 U.S.C. 106(f), 44701(a) and 44732 in Washington, DC on January 22, 2014.

**Michael P. Huerta,**

*Administrator.*

[FR Doc. 2014–02991 Filed 2–11–14; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### 23 CFR Part 636

**[FHWA Docket No. FHWA–2013–0043]**

**RIN 2125–AF58**

## Design-Build Contracting

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FHWA is revising its regulations related to the use of alternative technical concepts (ATC) in design-build project delivery of highway construction. This final rule eliminates the requirement to submit a base proposal when a contracting agency allows design-build proposers to submit ATCs in their technical and price proposals.

**DATES:** Effective March 14, 2014.

**FOR FURTHER INFORMATION CONTACT:** For technical information: Mr. Gerald Yakowenko, FHWA Office of Program Administration, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, 202–366–1562, *gerald.yakowenko@dot.gov.* For legal information: Ms. Janet Myers, Office of the Chief Counsel, 202–366–2019, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This document and all comments received may be viewed online through the Federal eRulemaking portal at: *http://www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page, *http://www.federalregister.gov,* or the Government Printing Office's Federal Digital System, *http://www.gpo.gov/fdsys.*

**Background**

The FHWA's current regulatory policy in part 636 allows contracting agencies to use ATCs in their procurement process subject to two conditions: (1) the ATC must not conflict with the criteria agreed upon in the environmental decisionmaking process, and (2) the contracting agency must require proposers to submit a base proposal in addition to supplemental ATC-based proposals. Specifically, 23 CFR 636.209(b) states: ''At your discretion, you may allow proposers to submit alternate technical concepts in their proposals as long as these alternate concepts do not conflict with criteria agreed upon in the environmental decision making process. Alternate technical concept proposals may supplement, but not substitute for base

proposals that respond to the Request for Proposal requirements.''

Thus, the current policy allows proposers to submit proposals based on an approved ATC, but not as a substitute for the base proposal.

The requirement for a base proposal and a supplemental ATC-based proposal was founded on the perception that it would allow for a fair comparison of proposals. When FHWA released the final rule implementing design-build contracting on December 10, 2002, the Agency believed that the requirement would provide contracting agencies with information on quality and price for comparison. In addition, contracting agencies could evaluate ATC-based proposals from firms desiring to submit innovative concepts. The underlying principle in the existing policy is to ensure fairness and open competition by making certain that all proposers are competing for the same project.

**Notice of Proposed Rulemaking (NPRM)**

The FHWA published an NPRM on August 1, 2013 (78 FR 46546), proposing to eliminate the base proposal requirement when a contracting agency allows design-build proposers to submit ATCs in their technical and price proposals. All comments received in response to the NPRM have been considered in adopting this final rule. Comments were received from 10 entities. The commenters include: four State departments of transportation (State DOTs), one local public agency, and five industry associations.

**Analysis of NPRM Comments and FHWA Response**

The following discussion summarizes the major comments submitted to the docket on the NPRM, notes where and why changes have been made to the rule, and states why particular recommendations or suggestions have not been incorporated into the final rule.

*General Discussion of Comments*

In general, most of the commenters expressed support for the revisions and concurred that a fair and transparent procurement process can be achieved as long as the request for proposal (RFP) document clearly describes the contracting agency's requirements for ATC content, submission, and review; procedures for confidential meeting; and methods for evaluating the ATC in the proposal review process. None of the commenters disagreed with ending the base proposal requirement when a contracting agency allows design-build proposers to submit ATCs in the technical and price proposals. However, a few commenters raised issues concerning confidentiality and the implementation of design-build contracting.

Several of the contracting agencies noted the benefits of using ATCs in design-build project delivery and concurred that the requirement to prepare base proposals is not cost effective. In particular, the Orange County Transportation Authority (OCTA) noted that ''ATCs have been proven to provide numerous benefits including the increased efficiency, the reduction of project risks, and the acceleration of project delivery. Requiring proposers to prepare and submit multiple proposals requires the expenditure of additional funds and man hours that discourages proposers from developing ATCs. OCTA believes that by removing this requirement, design-build proposers will instead be encouraged to explore and develop ATCs and include them in their design-build proposals.''

*Comments on the Confidentiality Requirement*

Several commenters expressed differing viewpoints regarding confidentiality issues in the ATC submission and review process. While the Design-Build Institute of America (DBIA) agreed with the proposed deletion of the base submission requirement, they expressed concerns regarding the exception to confidentiality in proposed section 636.209(b)(2). Specifically, DBIA stated that ''confidentiality is essential to the success of the ATC process and there should not be any exceptions to maintaining that confidentiality. DBIA believes that breaking confidentiality impedes design-builders from distinguishing the benefits of their ATC proposal from other proposals. Not only does breaking confidentiality discourage design-builders from submitting ATCs; it may have the opposite effect. In the example given in the proposed rule, a design-builder concerned about an addendum may choose to not bring forth an alternative to avoid a 4(f) property. The owner never learns of this and the 4(f) is not avoided, thus depriving the owner of the benefits of ATCs.'' Similarly, the American Road and Transportation Builders Association believed that contracting agencies have two primary responsibilities in administering an ATC process: ''1. Any willingness or acknowledgement for changing the project scope of work or requirements first set out in the RFP must be conveyed to all design-build teams so that no single team attains an unfair advantage. 2. Strict confidentiality must be maintained relative to intellectual property and ideas presented by each design-build team during the ATC process.''

On the other hand, two of the contracting agencies agreed with the proposed language regarding confidentiality. The Washington State DOT noted that confidentiality is ''essential for encouraging use of ATCs,'' but ''there are circumstances under which the agency would be compelled, in the interest of fairness, to reveal certain basic configuration changes to other proposers as a result of the inquiries associated with or consequent to a proposed ATC.'' In addition, New York DOT commented that experience ''with a proposed ATC avoiding 4(f) impacts and right-of-way acquisition'' demonstrated the need for the exceptions to the confidentiality requirement.

The FHWA shares the DBIA's belief that confidentiality is important, but also agrees with the contracting agency representatives regarding the necessity for the exception to confidentiality. It is important that contracting agencies provide a transparent and level playing field for all proposers. When a contracting agency makes a determination that there is no feasible and prudent alternative that avoids the use of Section 4(f) property, that agency is making a statement regarding the basic configuration for the project. If it later becomes apparent that there is a prudent and feasible approach to avoid the taking of Section 4(f) property, then, in the interest of fairness, it is incumbent upon the contracting agency to amend the RFP basic configuration/design criteria and inform all proposers of a modification. The FHWA revised the language in the final rule to indicate that when disclosure is necessary, the contracting agency must revise the RFP documents by releasing the minimal amount of information necessary to: (1) ensure compliance with Federal or State permitting and other legal requirements; and (2) ensure that all proposers are aware of the revised RFP requirements.

*Comments on an ''Equal or Better'' Requirement*

The Washington State DOT was concerned that the proposed regulatory language did not include an ''equal or better'' provision that is present in many State DOT ATC contract provisions. The Washington State DOT believed that this omission might ''open the door to scope reductions disguised as ATCs and upset the 'level playing field' concept that FHWA has worked so hard to establish and maintain.'' The FHWA

shares the State's concern that this omission might result in undesirable scope reductions. The ''Background'' section of the August 1, 2013, NPRM noted that ATCs are based on the concept of ''equal or better'' solutions. However, the FHWA is reluctant to provide a regulatory definition for an ATC. Many State DOTs currently have their own definitions in contract language. Instead of defining ATC, we are including the ''equal or better'' requirement in the revised 23 CFR 636.209(b)(1).

*Comments on Evaluation Factors*

The Council on Federal Procurement of Architectural and Engineering Services (COFPAES) did not comment directly on the proposed revision to Section 636.209, but provided a general comment on FHWA's design-build policy in part 636. The COFPAES urged that two-phase design-build contracts under 23 U.S.C. 112(b)(3) and 41 U.S.C. 3309 should comply with the requirements of the Brooks Act (40 U.S.C. 1101, et seq.) such that in phase one of a design-build process, ''cost related or price-related evaluation factors are not permitted.'' The FHWA notes that COFPAES submitted a similar comment in response to the FHWA's October 19, 2001, NPRM for design-build contracting (66 FR 53288). In the preamble to the December 10, 2002, final rule implementing design-build contracting (67 FR 75902), the FHWA stated: ''Design-build contracts are not contracts strictly for the procurement of architectural or engineering services and, therefore, they are not subject to the requirement to use qualifications-based selection procedures. In many design-build contracts, the engineering or architectural services comprise a relatively small percent of the total contract amount. The FHWA recognizes the importance of architectural and engineering services in reducing the life-cycle cost of projects. However, design-build contracts are not architectural and engineering contracts and the provisions of 23 U.S.C. 112(b)(2) do not apply to design-build contracts.''

## Additional Changes From the Proposed Rule

The FHWA is substituting the term ''alternative technical concept,'' in the final rule, for ''alternate technical concept,'' in the proposed rule, because the word ''alternative'' is more appropriate for the ATC process used by many contracting agencies where proposers are allowed to submit multiple technical concepts for the same project. Although there are some instances of the use of the word ''alternate,'' most contracting agencies use ''alternative'' in their ATC process. Therefore, the FHWA is using ''alternative'' in the final rule.

## Rulemaking Analyses and Notices

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this action will not be a significant regulatory action within the meaning of Executive Order 12866, or within the meaning of DOT's regulatory policies and procedures.

The economic impact of this rulemaking will be minimal and not adversely affect, in a material way, any sector of the economy. This rulemaking merely revises the FHWA's policies concerning the design-build contracting technique. The rule will not affect the total Federal funding available to the State DOTs under the Federal-aid highway program. Therefore, an increased use of design-build delivery method will not yield significant economic impacts to the Federal-aid highway program. Additionally, this rule will not interfere with any action taken or planned by another agency and not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), FHWA has evaluated the effects of this action and has determined that the action will not have a significant economic impact on a substantial number of small entities. The rule provides procedures for use of ATCs in design-build project delivery of highway construction. As such, it primarily affects States, which are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, States do not meet the definition of a small entity and the RFA does not apply. The FHWA further certifies that the proposed action will not have a significant economic impact on a substantial number of small entities.

*Unfunded Mandates Reform Act of 1995*

This rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (UMRA). Section 202 of the UMRA (2 U.S.C. 1531–1538) requires Federal agencies to prepare a written assessment of proposed Federal mandates likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. This rule will not result in the expenditure by State, local, or tribal governments, or by the private sector, of more than $100 million annually.

*Executive Order 13132 (Federalism)*

Executive Order 13132 requires agencies to assure 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, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The FHWA has analyzed this action in accordance with the principles and criteria contained in Executive Order 13132 and determined that it will not have a substantial direct effect or sufficient federalism implications on the States. The FHWA has also determined that this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. The FHWA did not receive any comments on the intergovernmental review analysis.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et seq.), the FHWA must obtain approval from the Office of Management and Budget for each collection of information we conduct, sponsor, or require through regulations. The FHWA has determined that this rule does not contain a collection of information requirement for purposes of the PRA.

*National Environmental Policy Act*

The FHWA has analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), and determined that it will not have any effect on the quality of the environment and meets the criteria for the categorical exclusion at 23 CFR 771.117(c)(20). However, Federal-aid highway projects on which design-build is used must still comply with the NEPA, as amended.

*Executive Order 12630 (Taking of Private Property)*

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

*Executive Order 12988 (Civil Justice Reform)*

This action 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.

*Executive Order 13045 (Protection of Children)*

The FHWA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this rule will not cause an environmental risk to health or safety that might disproportionately affect children.

*Executive Order 13175 (Tribal Consultation)*

The FHWA has analyzed this rule under Executive Order 13175 and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. This rule addresses obligations of Federal funds to States for Federal-aid highway projects and will not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

*Executive Order 13211 (Energy Effects)*

The FHWA has analyzed this action under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this rule is not a significant energy action because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

*Executive Order 12898 (Environmental Justice)*

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The FHWA has determined that this rule does not raise any environmental justice issues.

*Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 636**

Construction, Construction manager, General contractor, Grant programs, Transportation, Highways, and Roads.

Issued on: January 31, 2014.

**Gregory G. Nadeau,**

*Deputy Administrator, Federal Highway Administration.*

In consideration of the foregoing, FHWA amends title 23, Code of Federal Regulations, part 636 as follows:

## PART 636—DESIGN-BUILD CONTRACTING

■ 1. The authority citation for part 636 continues to read as follows:

**Authority:** Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; Sec. 1307 of Pub. L. 105–178, 112 Stat. 107; 23 U.S.C. 101, 109, 112, 113, 114, 115, 119, 128, and 315; 49 CFR 1.48(b).

■ 2. Amend § 636.209 by revising paragraph (b) to read as follows:

**§ 636.209 What items must be included in a phase-two solicitation?**

* * * * *

(b)(1) At your discretion, you may allow proposers to submit alternative technical concepts (ATCs) in their proposals if:

(i) The ATCs:

(A) Provide an equal or better solution; and

(B) Do not conflict with criteria agreed upon in the environmental decisionmaking process; and

(ii) The RFP document clearly describes your:

(A) Requirements for ATC content, submission, and review;

(B) Procedures for confidential meetings (if used); and

(C) Methods for evaluating ATCs in the proposal review process.

(2) You must maintain the confidentiality of ATCs, except to the extent that disclosure is necessary to maintain compliance with Federal or State permitting and other legal requirements necessary for the delivery of the project. When disclosure is necessary, you must revise the RFP documents by releasing the minimal amount of information necessary to ensure:

(i) Compliance with Federal or State permitting and other legal requirements; and

(ii) All proposers are aware of the revised RFP requirements.

[FR Doc. 2014–03034 Filed 2–11–14; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2013–0562]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; Inner Harbor Navigational Canal, New Orleans, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is modifying the operating schedules that govern the US 90 (Danzinger) Bridge across the Inner Harbor Navigational Canal (IHNC), mile 3.1 and the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) bridge across the IHNC, mile 4.6, both at New Orleans, LA. This change allows for the safe navigation of vessels while reflecting the low volume of vessel traffic through the bridges thereby increasing efficiency of operations. The changes allow the bridges to operate in a manner that aligns the two operating schedules so the bridge owner will be able to use the same bridge crew personnel to operate both bridges with little to no effect on navigation through the bridges.

**DATES:** This rule is effective March 14, 2014.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0562. 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 Mr. Jim Wetherington, Coast Guard; telephone 504–671–2128, email *james.r.wetherington@uscg.mil.* If you have questions on viewing the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Acronyms**

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
GIWW Gulf Intracoastal Waterway
IHNC Inner Harbor Navigation Canal
LDOTD Louisiana Department of Transportation and Development
NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code

## A. Regulatory History and Information

On October 23, 2013 we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Inner Harbor Navigational Canal, New Orleans, LA in the **Federal Register** (78 FR 63136) proposing the changes in the operating schedules for these two bridges. We also published a notice of temporary deviation from regulations; request for comments to run congruently with the NPRM, on October 22, 2013 (78 FR 62439). The temporary deviation served as a test period for the changes, allowing for public comment while the changes were in place. We received no comments on either action. No public meeting was requested, and none was held.

## B. Basis and Purpose

The Louisiana Department of Transportation and Development (LDOTD), on behalf of the Orleans Levee District, requested a change to the operating regulations for the US 90 (Danziger) and the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) bridges on the IHNC past the Gulf Intracostal Waterway (GIWW). The Coast Guard has approved this request. These changes allow LDOTD to operate these two bridges with the same personnel, thereby increasing the overall efficiency of operations on these bridges and ultimately reducing overall operational costs while allowing for improved transit through these bridges. This section of the IHNC is not on the GIWW and therefore has far fewer opening requests than the bridges over the GIWW.

The US 90 (Danzinger) Bridge across the IHNC, mile 3.1, at New Orleans, Orleans Parish, Louisiana is a vertical lift bridge with a vertical clearance of 50 feet above Mean High Water (MHW), elevation 5.0 Mean Sea Level (MSL), in the closed-to-navigation position and 120 feet MHW, elevation 5.0 MSL, in the open-to-navigation position; it averaged nine openings per month in the last year. The Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) Bridge across the IHNC, mile 4.6, at New Orleans, Orleans Parish, Louisiana is a bascule bridge with a vertical clearance of 46 feet above Mean High Water (MHW), elevation 5.0 Mean Sea Level (MSL), in the closed-to-navigation position and unlimited in the open-to-navigation position; it averaged 32 openings a month in the past year.

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

The Coast Guard provided a comment period of 60 days and received no comments on this regulatory action. One change to the regulatory text is made through this final rule for clarity. This change is regarding when a request for opening is required. The NPRM text states ''the draw of the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) Bridge, mile 4.6, shall open on signal from 8 a.m. through 8 p.m. and from 8 p.m. through 8 a.m. if at least two hours notice is given; except that the draw need not be opened from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday''. The corrected text states ''the draw of the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) Bridge, mile 4.6, shall open on signal from 7 a.m. to 8 p.m.; except the bridge need not open from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. From 8 p.m. to 7 a.m., the draw shall open on signal if at least two hours notice is given''. This change of text corrects an overlap of time periods in the previous text and makes the rule clearer.

The US 90 (Danzinger) Bridge, mile 3.1, has a current operating schedule under 33 CFR 117.458(b). The bridge shall open on signal; except that from 8 p.m. to 7 a.m. the draw shall open on signal if at least four hours notice is given, and the draw need not be opened from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. 33 CFR 117.458(b) will now allow the Danzinger Bridge to open if two hours notice is given 24 hours a day; except the bridge need not open from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. This change allows for the safe navigation of vessels while reflecting the low volume of vessel traffic through this bridge thereby increasing efficiency of operations. The change also allows the bridges to operate in a manner that aligns it with the operating schedules of the bridges upstream so the bridge owner will be able to use the same bridge crew personnel to operate both of their bridges with little to no effect on navigation through the bridges.

The Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) Bridge has a current operating schedule under 33 CFR 117.458(c). The bridge will open on signal at all times but is allowed to remain closed from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. 33 CFR 117.458(c) will now allow the Senator Ted Hickey Bridge to open on signal from 7 a.m. to 8 p.m.; except the bridge need not open from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. From 8 p.m. to 7 a.m., the draw shall open on signal if at least two hours notice is given. This change allows for the safe navigation of vessels while reflecting the low volume of vessel traffic through this bridge thereby increasing efficiency of operations. The change also allows the bridges to operate in a manner that aligns it with the operating schedules of the bridges upstream so the bridge owner will be able to use the same bridge crew personnel to operate both of their bridges with little to no effect on navigation through the bridges.

## D. Regulatory Analyses

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

### *1. Regulatory Planning and Review*

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

This rule is not a significant regulatory action. This rule merely modified a currently existing regulation by adjusting the required time of notification necessary to request a bridge opening. Mariners passing through this area will be aware of the notification requirements and will be able to plan their transits accordingly

and provide the proper notice if necessary.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule will affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit the Danzinger Bridge with less than two hours notice 24 hours a day and the owners or operators of vessels needing to transit the Senator Tom Hickey bridge between 8 p.m. to 7 a.m. on less than a two-hour notice. No comments were received from any of these entities regarding this action. Due to the limited use of the non-GIWW section of the Inner Harbor Navigation Canal, and the lack of commentary contradicting the determination, it has been determined that there will be little affect on small entities.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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 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 might 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 guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Section 117.458(b) and (c) are revised to read as follows:

**§ 117.458 Inner Harbor Navigation Canal, New Orleans.**

* * * * *

(b) The US 90 (Danzinger) Bridge, mile 3.1, shall open on signal if at least two hours notice is given; except that the draw need not be opened from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday.

(c) The draw of the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) Bridge, mile 4.6, shall open on signal from 7 a.m. to 8 p.m.; except that the bridge need not open from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. From 8 p.m. to 7 a.m., the draw shall open on signal if at least two hours notice is given.

Dated: January 28, 2014.

**Kevin S. Cook,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 2014–03087 Filed 2–11–14; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2014–0021]**

## Drawbridge Operation Regulation; Old River, Between Victoria Island and Byron Tract, CA

**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 State Highway 4 Drawbridge across Old River, mile 14.8, between Victoria Island and Byron Tract, CA. The deviation is necessary to allow the bridge owner to make critical repairs to the bridge gears. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

**DATES:** This deviation is effective without actual notice from February 12, 2014 until 6 p.m. on February 28, 2014. For the purposes of enforcement, actual notice will be used from 6 p.m. on January 30, 2014, until February 12, 2014.

**ADDRESSES:** The docket for this deviation, [USCG–2014–0021], 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 David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** California Department of Transportation has requested a temporary change to the operation of the State Highway 4 Drawbridge, mile 14.8, over Old River, between Victoria Island and Byron Tract, CA. The drawbridge navigation span provides 12 feet vertical clearance above Mean High Water in the closed-to-navigation position. Pursuant to 33 CFR 117.183, the draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. and at other times, opening the draw on signal if at least four hours advance notice is given to the drawtender at the Rio Vista drawbridge across the Sacramento River, mile 12.8. Navigation on the waterway is recreational and commercial.

The drawspan will be secured in the closed-to-navigation position from 6 p.m. on January 30, 2014 to 6 p.m. on February 28, 2014, to allow the bridge owner to repair the gears inside the main bridge gearbox, critical components of the drawbridge. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will not be able to open for emergencies. An alternative route around Victoria Island may be used for vessels unable to pass through the bridge in the closed position. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact 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: January 30, 2014.

**D.H. Sulouff,**

*District Bridge Chief, Eleventh Coast Guard District.*

[FR Doc. 2014–03094 Filed 2–11–14; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2013–1044]**

## Drawbridge Operation Regulation; Elizabeth River, Eastern Branch, Norfolk, 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 draw of the Norfolk Southern #5 Railroad Bridge, across the Elizabeth River Eastern Branch, mile 1.1, at Norfolk, VA. This deviation is necessary to facilitate the replacement of 189 bridge ties and the reworking of the moveable rail joints on the Norfolk Southern #5 Railroad drawbridge. This temporary deviation allows the drawbridge to remain in the closed to navigation position.

**DATES:** This deviation is effective from 8 a.m. on March 4, 2014 to 2 p.m. April 3, 2014.

**ADDRESSES:** The docket for this deviation, [USCG–2013–1044] 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. Kashanda Booker, Bridge Administration Branch Fifth District, Coast Guard; telephone (757) 398–6227, email *Kashanda.l.booker@uscg.mil.* If you have questions on reviewing the docket,

call Cheryl Collins, Program Manager, Docket Operations, 202–366–9826.

**SUPPLEMENTARY INFORMATION:** The Norfolk Southern Corporation, who owns and operates this drawbridge, has requested a temporary deviation from the current operating regulation set out in 33 CFR 117.5 to conduct the replacement of 189 bridge ties.

Under the regular operating schedule, the Norfolk Southern #5 Railroad Bridge, mile 1.1, in Norfolk, VA, the draw must open promptly and fully for the passage of vessels when a request or signal to open is given. The draw normally is open and only closes for train crossings or periodic maintenance. The Norfolk Southern #5 railroad Bridge, at mile 1.1, across the Elizabeth River (Eastern Branch) in Norfolk, VA, has a vertical clearance in the closed position to vessels of 6 feet above mean high water.

Under this temporary deviation, the drawbridge will be closed to navigation on the following schedule for the days specified:

March 4: 8 a.m. to 2 p.m.
March 5: 7 a.m. to 7 p.m.
March 6: 8 a.m. to 2 p.m.
March 10: 8 a.m. to 2 p.m.
March 11: 8 a.m. to 2 p.m.
March 12: 8 a.m. to 2 p.m.
March 13: 7 a.m. to 7 p.m.
April 2: 8 a.m. to 2 p.m.
April 3: 8 a.m. to 2 p.m.

At all other times the bridge will operate on its normal schedule. The bridge normally is maintained in the open-to-navigation position with several vessels transiting a week and only closes when trains transit across. Emergency openings cannot be provided. There are no alternate routes for vessels transiting this section of the Elizabeth River Eastern Branch but vessels may pass before 7 a.m. or 8 a.m. and after 2 p.m. or 7 p.m.

The Elizabeth River Eastern Branch is used by a variety of vessels including military, tug, commercial, and recreational vessels. The Coast Guard has carefully coordinated the restrictions with these waterway users. 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. Mariners able to pass under the bridge in the closed position may do so at any time and are advised to proceed with caution.

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: January 24, 2014.

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

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2014–03097 Filed 2–11–14; 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–2013–1072]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; Terrebonne Bayou, LA

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard is changing the operating schedule that governs the St. Ann swing bridge across Terrebonne Bayou, mile 28.8, at Bourg, Terrebonne Parish, Louisiana. The change will allow the bridge to operate on signal if at least 24 hours advanced notice is given. This change increases the efficiency of operations allowing for the safe navigation of vessels through the bridge while recognizing the low volume of vessel traffic through the bridge.

**DATES:** This interim rule is effective February 12, 2014.

Comments and related material must reach the Coast Guard on or before March 14, 2014.

**ADDRESSES:** Documents mentioned in this preamble are part of Docket Number USCG–2013–1072. 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.

You may submit comments, identified by docket number, using any one of the following methods:

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

(2) *Fax:* (202) 493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

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

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. David Frank; Bridge Administration Branch, Eighth Coast Guard District; telephone 504–671–2128, email *david.m.frank@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

CFR Code of Federal Regulations
DHS Department of Homeland Security
USCG United States Coast Guard
NEPA National Environmental Policy Act
§ Section Symbol
U.S.C. United States Code
MGL Mean Gulf Level
SR State Route

### A. Public Participation and Request for Comments

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

*1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2013–1072), 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. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by

the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a 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,* type the docket number (USCG–2013–1072) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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

*2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2013–1072) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*3. Privacy Act*

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

*4. Public Meeting*

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

**B. Regulatory History and Information**

As provided under the ''Public Participation and Request for Comments'' section above, this interim rule includes a request for comments and the Coast Guard encourages the public to participate through the comment process. Comments received will be reviewed to determine if this interim rule requires further review or revision before becoming final.

The Coast Guard is issuing this interim final rule without prior notice pursuant to authority under section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 et seq.). This provision authorizes an agency to issue a rule without prior notice when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' While the Coast Guard does not anticipate any adverse comment regarding this change in bridge opening requirement, this rule includes a request for comments during the first 30 days that the rule is in effect, providing the public an opportunity to comment on the change while it is in place. Should comments received propose or support the need to revise this change, the Coast Guard will address such comments and revise this interim rule as necessary. It is unnecessary to provide prior notice and comment because there have only been 15 openings for this bridge since 2008 and no requests since 2011. Additionally, if a vessel does require an opening, the vessel owner may do so by giving advanced notice.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. Due to the fact that there is limited vessel traffic on the waterway, implementation of the interim rule will not have a significant effect on the mariners using the waterway. Since 2008, the bridge has opened 15 times for the passage of vessels, averaging less than 3 times per year. The bridge owner requested changing the operating schedule to allow the bridge to remain in the closed-to-navigation position and open for vessel traffic only upon receiving at least 24 hours advanced notification. This change allows the bridge to operate more efficiently because it will not require a full-time tender. Providing a full 30-day notice for changing the operating schedule of the bridge is unnecessary based on the low volume of vessels requiring the bridge to open. Additionally, the bridge will still be able to open to navigation upon giving advanced notice.

**C. Basis and Purpose**

The Coast Guard received a request from the Terrebonne Parish Consolidated Government, in conjunction with the Lafourche Parish Council, to modify the existing operating schedule of the new St. Ann swing bridge across Terrebonne Bayou, mile 28.8, at Bourg, Terrebonne Parish, Louisiana. The bridge owner would like to open the bridge on signal if at least 24 hours advanced notification is given.

This change will allow the bridge owner to open the bridge for vessel traffic with sufficient notice while removing the requirement that a bridge tender be on the bridge at all times. Construction of the new swing bridge was completed late last year and presently the bridge is required to open on signal for the passage of vessels.

Since 2008, the bridge has only opened 15 times for the passage of vessels and during the two years (11/2011 to 11/2013) that the new bridge was under construction, no requests for openings occurred. Additionally, since completion of the new bridge, no openings have been requested by mariners. Several of the bridges downstream of the St. Ann swing bridge are operated under special operating regulations published in 33 CFR 117.505. These special operating regulations currently operate without negative impacts or issue to the waterway users and increase efficiency. Vessels that would require an opening at the St. Ann swing bridge, likely passed through or will pass through the SR 24 (Presquille Isle) bridge, located 2.5 miles upstream of the St. Ann swing bridge at mile 31.3 in Bourg. The Presquille Isle bridge is a fixed bridge with a vertical clearance of 3.4 feet above mean high water, elevation 3.4 feet Mean Gulf Level (MGL). Based on the clearance through the Presquille Isle bridge and the low volume of vessels transiting into this area, the primary affect of this change is limited to the property owners located on and vessels transiting this waterway between the St. Ann swing bridge and the Presquille Isle bridge.

**D. Discussion of Interim Rule**

This interim rule will add a new paragraph (b) to the existing 33 CFR 117.505 for this waterway. It will redesignate the already existing paragraphs for bridges at mile markers above 28.8. This interim rule will allow the bridge to open on signal if at least 24 hours advanced notification is given.

As no vessels have transited through this bridge site in the last two years and only 15 openings were requested since 2008, this regulation will have a minimal affect on the property owners located in and vessels transiting the area. Additionally, the bridge can be opened in less than four hours if there is an emergency on the waterway.

**E. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

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

This rule allows the limited number of vessels using this stretch of the waterway the opportunity to transit with proper notification. As this bridge has not opened for vessel traffic during the two years (11/2011 to 11/2013) that the new bridge was under construction and only 15 times since 2008, this regulation will have a minimal affect on those property owners and vessels who wish to use the waterway.

*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 would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The property owners or vessel operators who wish to transit on Terrebonne Bayou between mile 28.8 and mile 31.3. However, as provided in this rule and currently under 33 CFR 117.505, vessel owners will still be able to transit the bridge if proper notification is given and in the case of an emergency.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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 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 might 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 guides 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 which do not individually or cumulatively have a significant effect on the human environment. This rule simply

promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. In § 117.505, paragraphs (b), (c), and (d) are redesignated as (c), (d), and (e) and a new paragraph (b) is added to read as follows:

**§ 117.505 Terrebonne Bayou.**

* * * * *

(b) The draw of the St. Ann bridge, mile 28.8 at Bourg, shall open on signal if at least 24 hours notice is given.

* * * * *

Dated: January 24, 2014.

**Todd A. Sokalzuk,**

*Captain, U.S. Coast Guard, Commander, Eighth Coast Guard District, Acting.*

[FR Doc. 2014–03088 Filed 2–11–14; 8:45 am]

**BILLING CODE 9110–04–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 9 and 721

**[EPA–HQ–OPPT–2013–0739; FRL–9903–70]**

**RIN 2070–AB27**

### Significant New Use Rules on Certain Chemical Substances

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is promulgating significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 35 chemical substances which were the subject of premanufacture notices (PMNs). Fourteen of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. This action requires persons who intend to manufacture (including import) or process any of these 35 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

**DATES:** This rule is effective on April 14, 2014. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on February 26, 2014.

Written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs must be received on or before March 14, 2014 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**). If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before March 14, 2014, EPA will withdraw the relevant sections of this direct final rule before its effective date.

For additional information on related reporting requirement dates, see Units I.A., VI., and VII. of the **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2013–0739, 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–2013–0739. 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 docket ID number EPA–HQ–OPPT–2013–0739. EPA's policy is that all comments received will be included in the docket without change and may be made available 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:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001;

telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

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

**SUPPLEMENTARY INFORMATION:**

## I. General Information

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

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule on or after March 14, 2014 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

### *A. What action is the Agency taking?*

EPA is promulgating these SNURs using direct final procedures. These SNURs will require persons to notify EPA at least 90 days before commencing the manufacture, or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Receipt of such notices allows EPA to assess risks that may be presented by the intended uses and, if appropriate, to regulate the proposed use before it occurs. Additional rationale and background to these rules are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** issue of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

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

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

### *C. Applicability of General Provisions*

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

## III. Significant New Use Determination

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

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

processing, distribution in commerce, and disposal of a chemical substance.

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

To determine what would constitute a significant new use for the 35 chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

## IV. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 35 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) consent order or, for non-section 5(e) SNURs, the basis for the SNUR (i.e., SNURs without TSCA section 5(e) consent orders).
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VIII. for more information).
- CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of this rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (i.e., limits on manufacture volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

This rule includes 14 PMN substances that are subject to ''risk-based'' consent orders under TSCA section 5(e)(1)(A)(ii)(I) where EPA determined that activities associated with the PMN substances may present unreasonable risk to human health or the environment. Those consent orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The so-called ''section 5(e) SNURs'' on these PMN substances are promulgated pursuant to § 721.160, and are based on and consistent with the provisions in the underlying consent orders. The section 5(e) SNURs designate as a ''significant new use'' the absence of the protective measures required in the corresponding consent orders.

This rule also includes SNURs on 21 PMN substances that are not subject to consent orders under TSCA section 5(e). In these cases, for a variety of reasons, EPA did not find that the use scenario described in the PMN triggered the determinations set forth under TSCA section 5(e). However, EPA does believe that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a ''significant new use.'' These so-called ''non-section 5(e) SNURs'' are promulgated pursuant to § 721.170. EPA has determined that every activity designated as a ''significant new use'' in all non-section 5(e) SNURs issued under § 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), i.e., these significant new use activities, ''(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified'' for the PMN substance.

*PMN Number P-08-179*

*Chemical name:* 1,2,3-Propanetricarboxamide, N1,N2,N3-tris(2-methylcyclohexyl)-.

*CAS number:* 160535–46–6.

*Basis for action:* The PMN states that the generic (non-confidential) use of the substance is as a nucleator for polymers. Based on ecological structure activity relationship (EcoSAR) analysis of test data on analogous amides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 12 parts per billion (ppb) of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 12 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 12 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

*Recommended testing:* EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (Organisation for Economic Co-Operation (OECD) Test Guideline 23) be followed.

*CFR citation:* 40 CFR 721.10695.

*PMN Numbers P-11-483, P-11-487, P-11-527, P-11-528, P-11-529, P-11-530, P-11-532, P-11-533, and P-11-534*

*Chemical names:* Polyfluorinated alkyl thiol (generic) (P-11-483 and P-11-528); Polyfluorinated alkyl polyamide (generic) (P-11-487); Polyfluorinated alkyl halide (generic) (P-11-527); Polyfluorinated alkyl thio acrylamide (generic) (P-11-529); Polyfluorinated alkyl thio polyacrylamide (generic) (P-11-530 and P-11-533); Polyfluorinated alkyl amine (generic) (P-11-532); and Polyfluorinated alkyl thio polyacrylic acid-acrylamide (generic) (P-11-534).

*CAS numbers:* Not available.

*Effective date of TSCA section 5(e) consent order:* April 12, 2013.

*Basis for TSCA section 5(e) consent order:* The PMNs P-11-487, P-11-530, P-11-533, and P-11-534 state that the generic (non-confidential) use of these substances is as surfactants. The PMNs P-11-483, P-11-527, P-11-528, P-11-529, and P-11-532 state that the generic (non-confidential) use of these substances is as chemical intermediates. Based on analogy to other perfluorinated chemicals including perfluorooctanoic acid (PFOA), perfluorooctanesufonate (PFOS), and perfluorohexane sulfonate (PFHS), EPA has concerns that the PMN substances and/or degradation products will persist in the environment, could bioaccumulate or biomagnify, and be toxic (PBT) to people, wild mammals and birds. Some perfluorinated chemicals, PFOA and PFOS, are expected to persist for years in the environment. Biodegradation and photolysis tests of analogous substances to PFOA and PFOS indicate little or no biodegradation or photolysis of perfluoroalkyl compounds. Bioaccumulation concerns are based on concerns raised by the measured presence of certain perfluoroalkyl compounds with longer carbon chain length, including PFOA, PFOS, and PFHS in wildlife and in human blood samples. EPA has human health concerns for irritation to skin, eyes, lungs, mucous membranes, and lung toxicity if inhaled based on surfactant properties of the PMN substances. Toxicity studies on PFOA and PFOS indicate liver toxicity, blood toxicity, male reproductive toxicity, immunosuppression, and oncogenicity. These factors, taken together, raise

concerns for potential adverse chronic effects of P-11-483, P-11-487, P-11-527, P-11-528, P-11-529, P-11-530, P-11-532, P-11-533, P-11-534 and/or degradation products. The consent order was issued under TSCA section 5(e)(1)(A) based on a finding that these substances may present an unreasonable risk of injury to human health and the environment, these substances may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substances and their potential degradation products. To protect against these risks, the consent order requires:

1. Risk notification. If as a result of the test data required, the company becomes aware that the PMN substance may present a risk of injury to human health or the environment, the company must incorporate this new information, and any information on methods for protecting against such risk into a Material Safety Data Sheet (MSDS), within 90 days.

2. Manufacture of the PMN substances: (a) According to the chemical composition section of the consent order, including analyzing and reporting certain starting raw material impurities to EPA; and (b) within the maximum established limits of certain fluorinated impurities of the PMN substances as stated in the consent order.

3. Use of the substances only as described in the consent order.

4. No use of the PMN substances in consumer products with spray applications.

5. Submission of certain environmental fate testing prior to exceeding the confidential production volume limit of the aggregate amount of the PMN substances, P-11-487, P-11-530, P-11-533, and P-11-534 specified in the consent order.

6. The individual annual manufacture volume for P-11-487, P-11-530, P-11-533, and P-11-534 must not reach the confidential annual production volume specified in the consent order.

7. Incinerate all waste containing any of the PMN substances from manufacturing and processing in an incinerator with a combustion temperature of a minimum of 1,000 degrees Celsius (C) and a residence time of a minimum of 2 seconds.

8. No use of the substances resulting in releases to surface water.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

*Recommended testing:* EPA has determined that the test data from certain human health, environmental fate, and ecotoxicity testing identified in the consent order would help characterize possible effects of the substances and their degradation products. The company has agreed not to exceed the first production limit without performing a metabolism and pharmacokinetics test (OPPTS Test Guideline 870.7485), and a combined repeated dose toxicity with the reproduction/development toxicity screening test (OPPTS Test Guideline 870.3650 modified or OECD Test Guideline 422 modified) on a species to be determined by the results of the pharmacokinetics studies with modifications, for the P-11-483 chemical substance. The PMN submitter has also agreed not to exceed the second production limit without performing the aerobic and anaerobic transformation in soil test (OECD Test Guideline 307) for the P-11-530 chemical substance. The company has agreed not to exceed the third production limit without performing the fish acute toxicity test, freshwater and marine test (OPPTS Test Guideline 850.1075), an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010), and an algal toxicity test (Office of Chemical Safety and Pollution Prevention (OCSPP) Test Guideline 850.4500) for the P-11-483 chemical substance. The company also has agreed to not to exceed the fourth production limit without performing the avian reproduction test (OPPTS Test Guideline 850.2300) for the P-11-483 chemical substance, and hydrolysis as a function of pH and temperature (OPPTS Test Guideline 835.2130), ultraviolet (UV)/visible absorption (OPPTS Test Guideline 830.7050), direct photolysis rate in water by sunlight test (OPPTS Test Guideline 835.2210), if wavelengths greater than 290 nanometers (nm) are absorbed in the previous test, indirect photolysis screening test: Sunlight photolysis in waters containing dissolved humic substances (OPPTS Test Guideline 835.5270), anaerobic biodegradability of organic compounds in digested sludge: By measurement of gas production (OPPTS Test Guideline 835.3420), and modified semi continuous activated sludge (SCAS) test for insoluble and volatile chemicals (OPPTS Guideline 835.5045), or inherent biodegradability: Zahn-Wellens/EVPA Test (OECD Test Guideline 302B), modified with analysis for degradation products for P-11-530 chemical substance. Further testing details are available in the consent order located in the docket under docket EPA–HQ–OPPT–2013–0739. EPA has also determined that the results of certain other human health, ecotoxicity, and environmental fate testing would help characterize the PMN substance. The consent order does not require submission of the pended testing detailed in the consent order at any specified time or production volume. However, the consent order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMNs will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

*CFR citations:* 40 CFR 721.10696 (P-11-483 and P-11-528); 40 CFR 721.10697 (P-11-487); 40 CFR 721.10698 (P-11-527); 40 CFR 721.10699 (P-11-529); 40 CFR 721.10700 (P-11-530 and P-11-533); 40 CFR 721.10701 (P-11-532); and 40 CFR 721.10702 (P-11-534).

*PMN Numbers P-12-416, P-12-417, P-12-418, and P-12-419*

*Chemical names:* Multi-walled carbon nanotubes (generic).

*CAS numbers:* Not available.

*Effective date of TSCA section 5(e) consent order:* December 3, 2012.

*Basis for TSCA section 5(e) consent order:* The PMNs state that the use of the substances will be as: An additive for electro-static discharge (ESD) in semiconductor packaging and electronic devices; additive for weight-reduction in vehicles and windmill blades; additive to reinforce building frames and machine components; additive to improve conductivity in batteries and solar cells; additive in seat-heaters (heat generating element in heating devices and materials); electron emitter for lighting and x-ray sources; additive for heat transfer and thermal emission in electronic devices; additive for electromagnetic interface (EMI) shielding; catalyst support in chemical manufacturing; and filter additive to remove nanoscale materials. Based on test data on analogous respirable, poorly soluble particulates and other carbon nanotubes (CNTs), EPA identified concerns for pulmonary toxicity, fibrosis, carcinogenicity, mutagenicity, and immunotoxicity. Further, available data suggest that pulmonary deposition of some nanoparticles, including CNTs, may induce cardiovascular toxicity if inhaled. Although there are no environmental toxicity studies on CNTs available, EPA expects that some fraction of the CNTs, if released into the environment, will eventually be suspended in water. There have been sublethal effects observed for analogue single wall CNTs in rainbow trout at levels as low as 100 ppb. The order was

issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that these substances may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the consent order requires:

1. Use of personal protective equipment including gloves and protective clothing impervious to the substances when there is a potential dermal exposure and a National Institute of Occupational Safety and Health (NIOSH)-certified air-purifying, tight-fitting full-face respirator equipped with N-100, or P-100, or R-100 filters or power air-purifying particulate respirator with an assigned protection factor (APF) of at least 50 when there is potential inhalation exposure.
2. No domestic manufacture.
3. Use of the substances only as described in the consent order.
4. Import of the substances at a cumulative, aggregate volume not to exceed a confidential volume specified in the consent order unless the company has submitted the results of certain health studies.
5. No use of the substances resulting in surface water releases.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

*Recommended testing:* EPA has determined that the following tests would help characterize the human health effects of the PMN substances. The PMN submitter has agreed not to exceed the confidential production volume stated in the consent order without performing the 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) on P-12-416 with a post-exposure observation period of up to 3 months; bronchoalveolar lavage fluid (BALF) analysis; aggregation/agglomeration state, shape, particle size distribution and surface properties of material as-manufactured (dry) and as-administered; aggregation/agglomeration state, shape, particle size distribution and surface properties of materials of the delivered materials after administration; determination of cardiovascular toxicity, heart histopathology, and data on pulmonary deposition. In addition, in the consent order, the PMN submitter agreed to provide physical/chemical properties data within a specified time limit.

*CFR citation:* 40 CFR 721.10703.

*PMN Number P-12-548*

*Chemical name:* Aryl-substituted alkane (generic).

*CAS number:* Not available.

*Effective date of TSCA section 5(e) consent order:* April 30, 2013.

*Basis for TSCA section 5(e) consent order:* The PMN states that the generic (non-confidential) use of the substance will be as a dielectric fluid. EPA has identified health and environmental concerns because the substance may be a persistent, bio-accumulative, and toxic (PBT) chemical, based on physical/chemical properties of the PMN substance, as described in the New Chemical Program's PBT category (64 FR 60194; November 4, 1999) (FRL–6097–7). EPA estimates that the PMN substance will persist in the environment more than two months and estimates a bioaccumulation factor of greater than or equal to 1,000. Also, based on submitted test data on the PMN substance, EPA identified concerns for developmental and liver toxicity to dermally exposed workers. Based on EcoSAR analysis of test data on neutral organic chemicals, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 8 ppb of the PMN substance in surface waters. The consent order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that uncontrolled manufacture, processing, distribution in commerce, use, and disposal of this substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the consent order requires:

1. Use of personal protective equipment including gloves impervious to the substance when there is a potential dermal exposure.
2. Establishment and use of a hazard communication program.
3. Use of the substance only as described in the consent order.
4. Manufacture of the substance at a cumulative volume not to exceed a confidential volume specified in the consent order unless the company has submitted the results of certain health studies.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

*Recommended testing:* EPA has determined that the following tests would help characterize the environmental and human health effects of the PMN substance. The consent order contains three confidential production volume limits. The PMN submitter has agreed not to exceed the first production volume limit without performing a 14-day dermal toxicity test (OPPTS Test Guideline 870.3200 or OECD Test Guideline 410). The PMN submitter has also agreed not to exceed the second (higher) production volume limit without performing a bioaccumulation in sediment-dwelling benthic oligochaetes test (OECD Test Guideline 315). The PMN submitter has also agreed not to exceed the third (higher) production volume limit without performing a sediment and soil adsorption/desorption isotherm test (OPPTS Test Guideline 835.1220). The PMN submitter has also agreed to submit to EPA the results of any other testing conducted to comply with REACH (Regulation, Evaluation, Authorization, and Restriction of Chemicals in the European Union) no later than 90 days after submission of the testing to the European Union.

*CFR citation:* 40 CFR 721.10704.

*PMN Number P-12-572*

*Chemical name:* Aromatic amine with cyclo amino carbonyls (generic).

*CAS number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the substance will be as a reactive amine for enhancing pigment dispersions. Based on test data on the PMN substance as well as on analogous aromatic amines, EPA identified human health concerns regarding oncogenicity and mutagenicity from exposure to the PMN substance via inhalation, dermal, and drinking water exposures. Further, based on EcoSAR analysis of test data on analogous anilines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 11 ppb of the PMN substance in surface waters. This concentration is also expected by the Agency to be protective of human health concerns via drinking water exposure. As described in the PMN, occupational exposures are expected to be minimal due to the use of impervious gloves and a NIOSH-certified particulate respirator. Releases of the substance are not expected to result in surface water concentrations that exceed 11 ppb which then effectively limits drinking water exposures. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without the use of impervious gloves, where there is a potential for dermal exposure; use of the substance without a NIOSH-certified particulate respirator with an APF of at least 10, where there is a potential for inhalation exposures; use of the substance other than as an intermediate; or use of the substance resulting in surface water concentrations exceeding 11 ppb may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C), (b)(3)(i), (b)(3)(ii), and (b)(4)(ii).

*Recommended testing:* EPA has determined that the results of an algal toxicity test (OCSPP Test Guideline 850.4500), an aquatic invertebrate acute toxicity test (OPPTS Test Guideline 850.1010), a fish acute toxicity test (OPPTS Test Guideline 850.1075), and a combined repeated dose toxicity with the reproduction/developmental toxicity test (OPPTS Test Guideline 870.3650) would help characterize the human health and environmental effects of the PMN substance.

*CFR citation:* 40 CFR 721.10705.

*PMN Number P-12-576*

*Chemical name:* Infused carbon nanostructures (generic).

*CAS number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the substance is as an additive to provide conductive properties to reinforcements used in composites. Based on available information on analogous carbon structures, EPA identified concerns for lung effects. No significant inhalation exposures are expected when the PMN substance is manufactured according to the process identified in the PMN, to incorporate the PMN substance into pellets. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that a manufacturing process other than as described in the PMN (the manufacturing process described in the PMN includes incorporation of the PMN substance into pellets), may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

*Recommended testing:* EPA has determined that the following analysis of the PMN substance would help characterize the effects of the PMN substance: The dimensions, the structure, branching characteristics, presence of the catalyst in the PMN substance, and physical-chemical properties of the carbon nanostructures. These properties should be determined and reported to EPA once a year for three consecutive years.

*CFR citation:* 40 CFR 721.10706.

*PMN Number P-13-127*

*Chemical name:* Substituted benzyl acrylate (generic).

*CAS number:* Not available.

*Basis for action:* The PMN states that the use of the substance is as a resin for industrial coatings. Based on test data on the PMN substance, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in releases to surface waters exceeding 1 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i).

*Recommended testing:* EPA has determined that the results of a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) and a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) would help characterize the environmental effects of the PMN substance.

*CFR citation:* 40 CFR 721.10707.

*PMN Number P-13-152*

*Chemical name:* Zirconium substituted heteropolycyclic (generic).

*CAS number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the substance is a contained use in electronic equipment. Based on EcoSAR analysis of test data on analogous zirconium compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 10 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 10 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in releases to surface water concentrations exceeding 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

*Recommended testing:* EPA has determined that the results of an algal toxicity test (OCSPP Test Guideline 850.4500), a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300), and a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substance and mixtures (OECD Test Guideline 23) be followed.

*CFR citation:* 40 CFR 721.10708.

*PMN Number P-13-168*

*Chemical name:* Alkylphenol (generic).

*CAS number:* Not available.

*Basis for action:* The PMN states that the use of the substance is as a reactant for a lubricant additive. Based on EcoSAR analysis of test data on analogous phenols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

*Recommended testing:* EPA has determined that the results of a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300), a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400), and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed.

*CFR citation:* 40 CFR 721.10709.

*PMN Number P-13-192*

*Chemical name:* 4,7-Methano-1H-indene, 3a,4,7,7a-tetrahydro-, polymer with 2-methyl-1,3-butadiene and 5-(1-methylethenyl)bicyclo[2.2.1]hept-2-ene.

*CAS number:* 1412159–51–3.

*Basis for action:* The PMN states that the substance is used as a rubber additive. Based on EcoSAR analysis of test data on analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may result in significant adverse

environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

*Recommended testing:* EPA has determined that the results of a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300), a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400), and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed.

*CFR citation:* 40 CFR 721.10710.

*PMN Number P-13-197*

*Chemical name:* Alkyl substituted catechol (generic).

*CAS number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the substance will be as a raw material for organic synthesis. Based on test data on an analog, EPA identified potential human health concerns regarding oncogenicity, skin and eye irritation and corrosion, dermal sensitization, mutagenicity, and developmental toxicity from exposure to the PMN substance via inhalation, dermal, and drinking water exposures. Further, based on EcoSAR analysis of test data on analogous polyphenols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 20 ppb of the PMN substance in surface waters. This concentration is also expected by the Agency to be protective of human health concerns via drinking water exposures. As described in the PMN, occupational exposure is expected to be minimal due to the use of impervious gloves and a NIOSH-certified particulate respirator with an APF of 1,000; and releases to surface waters are not expected which then effectively limits drinking water exposures. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without the use of impervious gloves, where there is a potential for dermal exposure; use of the substance without a NIOSH-certified particulate respirator with an APF of 1,000, where there is a potential for inhalation exposures; use of the substance other than as an intermediate; or use of the substance resulting in surface water concentrations exceeding 20 ppb may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).

*Recommended testing:* EPA has determined that the results of an algal toxicity test (OCSPP Test Guideline 850.4500); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075), as well as either the *in vitro* skin corrosion: transcutaneous electrical resistance test (TER) (OECD Test Guideline 430) or the *in vitro* skin corrosion: human skin model test (OECD Test Guideline 431) or the *in vitro* membrane barrier test method for skin corrosion (OECD Test Guideline 435) would help characterize the human health and environmental effects of the PMN substance.

*CFR citation:* 40 CFR 721.10711.

*PMN Number P-13-217*

*Chemical name:* Antimony tris(dialkyldithiocarbamate) (generic).

*CAS number:* Not available.

*Basis for action:* The PMN states that the use of the substance is as an extreme pressure, anti-wear additive for greases and oils. Based on EcoSAR analysis of test data on analogous dithiocarbamates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 4 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 4 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

*Recommended testing:* EPA has determined that the results of a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) and a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) would help characterize the environmental effects of the PMN substance.

*CFR citation:* 40 CFR 721.10712.

*PMN Number P-13-259*

*Chemical name:* Antimony tris(dialkyldithiocarbamate) (generic).

*CAS number:* Not available.

*Basis for action:* The PMN states that the use of the substance is as an extreme pressure, anti-wear additive for greases and oils containing the PMN substance and sulfurized isobutylene. Based on EcoSAR analysis of test data on analogous organic antimony dithiocarbamate, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 4 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 4 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

*Recommended testing:* EPA has determined that the results of a ready biodegradability test (OECD Test Guideline 301), a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300), and a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed.

*CFR citation:* 40 CFR 721.10713.

*PMN Number P-13-260*

*Chemical name:* Zinc bis(dialkyldithiocarbamate) (generic).

*CAS number:* Not available.

*Basis for action:* The PMN states that the use of the substance is as an extreme pressure, anti-wear additive for greases and oils containing the PMN substance and process oil as well as an extreme pressure, anti-wear additive for greases and oils containing the PMN substance and sulfurized isobutylene. Based on EcoSAR analysis of test data on analogous zinc salts, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 7 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 7 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 7 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets

the concern criteria at § 721.170(b)(4)(ii).

*Recommended testing:* EPA has determined that the results of a ready biodegradability test (OECD Test Guideline 301), a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300), and a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed.

*CFR citation:* 40 CFR 721.10714.

*PMN Number P-13-346*

*Chemical name:* Carbonic acid, dialkyl ester (generic).

*CAS number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the PMN substance will be as an encapsulated part in a polymer matrix used as part of a fragrance slurry in consumer fabric care and cleaning products. Based on test data on the PMN substance and EcoSAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early-life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the PMN substance to surface water exceed releases from importing 100,000 kilograms of the PMN substance per year. For the use described in the PMN and at the importation volume described in the PMN, environmental releases did not exceed 1 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed importing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any domestic manufacture of the PMN substance, use of the substance other than as described in the PMN, or importing the PMN substance at volumes greater than 100,000 kilograms per year, could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).

*Recommended testing:* EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) would help characterize the environmental effects of the PMN substance.

*CFR citation:* 40 CFR 721.10715.

*PMN Number P-13-355*

*Chemical name:* Phenol, 2,6-dimethyl-, homopolymer, ether with 2,2′,3,3′,5,5′-hexamethyl[1,1′-biphenyl]-4,4′-diol (2:1),bis[(ethenylphenyl)methyl] ether.

*CAS number:* 558452–77–0.

*Basis for action:* The PMN states that the use of the substance is as a polymeric coating. Based on test data on the PMN substance, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 2 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 2 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i).

*Recommended testing:* EPA has determined that the results of a chironomid sediment toxicity test (OPPTS Test Guideline 850.1790); a whole sediment acute toxicity invertebrates, freshwater or marine (OPPTS Test Guideline 850.1735 or 850.1740); a sediment-water chironomid toxicity using spiked water test (OECD Test Guideline 219); a sediment-water chironomid toxicity test using spiked sediment (OECD Test Guideline 218); a sediment-water lumbriculus toxicity test using spiked sediment (OECD Test Guideline 225); a sediment-water chironomid life-cycle toxicity test using spiked water or spiked sediment (OECD Test Guideline 233); methods for measuring the toxicity and bioaccumulation of sediment-associated contaminants with freshwater invertebrates (EPA 600/R–99/064 March 2000; see *http://nepis.epa.gov/Exe/ZyPDF.cgi/Docket=30003SBA.PDF*), and environmental monitoring of the PMN substance would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed.

*CFR citation:* 40 CFR 721.10716.

*PMN Number P-13-365*

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

*CAS number:* Not available.

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

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

*CFR citation:* 40 CFR 721.10717.

*PMN Number P-13-374*

*Chemical name:* Substituted picolinic acid (generic).

*CAS number:* Not available.

*Basis for action:* The PMN states that the specific use of the substance will be as a pesticide intermediate. Based on test data of the PMN substance and close analogs, the Agency identified human health concerns for systemic and developmental toxicities, neurotoxicity, and oncogenicity from dermal, drinking water, and inhalation exposures. Further, based on test data on the PMN substance, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 180 ppb of the PMN substance in surface water. This concentration is also expected by the Agency to be protective of human health concerns via drinking water exposure. For the use described in the PMN, EPA does not expect significant occupational exposures and releases of the PMN substance are not expected to

result in surface water concentrations that exceed 180 ppb which then effectively limits drinking water exposures. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as a pesticide intermediate could result in exposures which may cause serious health or ecological effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C), (b)(3)(i), and (b)(4)(i).

*Recommended testing:* EPA has determined that the results of industrial workplace monitoring and environmental release information would help characterize the health and environmental effects of the PMN substance.

*CFR citation:* 40 CFR 721.10718.

*PMN Number P-13-392*

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

*CAS number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the substance will be for wood, plastic, and automotive paint material. Based on test data on analogous diisocyanates, EPA identified concerns for dermal and respiratory sensitization, irritation to all moist tissues, and lung effects if inhaled based on the low molecular weight isocyanates, to workers exposed to the PMN substance. As described in the PMN, worker inhalation exposure is not expected and dermal exposure will be minimal due to the use of adequate personal protective equipment. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified respirator with an APF of at least 10, where there is potential inhalation exposure; or any use of the PMN substance in a consumer product, may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

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

*CFR citation:* 40 CFR 721.10719.

*PMN Number P-13-393*

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

*CAS number:* Not available.

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

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

*CFR citation:* 40 CFR 721.10720.

*PMN Number P-13-455*

*Chemical name:* Poly(oxy-1,2-ethanediyl), .alpha.,.alpha.′-[(1-methylethylidene)di-4,1-phenylene]bis[.omega.-[[6-(2,5-dihydro-2,5-dioxo-1H-pyrrol-1-yl)-1-oxohexyl]oxy]-.

*CAS number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the substance will be as a conductive adhesive in the electronics industry. Based on EcoSAR analysis of test data on analogous imides and esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. For the specific use described in the PMN, environmental releases are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the PMN substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

*Recommended testing:* EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance.

*CFR citation:* 40 CFR 721.10721.

*PMN Number P-13-468*

*Chemical name:* Oxirane,2-[(1-propen-1-yloxy)methyl]-.

*CAS number:* 1607–23–4.

*Basis for action:* The PMN states that the substance will be used as a site-limited chemical intermediate to make a curable monomer. Based on test data on analogous epoxides, EPA identified concerns for skin and lung sensitization, mutagenicity, oncogenicity, developmental toxicity, male reproductive, liver, and kidney toxicity to workers exposed to the PMN substance. As described in the PMN, worker inhalation exposure is not expected and dermal exposure will be minimal due to the use as an intermediate and use of adequate personal protective equipment. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified respirator with an APF of at least 10, where there is potential inhalation exposure; the use of the substance without impervious gloves, where there is potential for dermal exposure; or use other than as an intermediate may cause serious health effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii).

*Recommended testing:* EPA has determined that the results of a carcinogenicity test (OPPTS Test

Guideline 870.4200) and a 90-day oral toxicity in rodents test (OPPTS Test Guideline 870.3100) would help characterize the human health effects of the PMN substance.

*CFR citation:* 40 CFR 721.10722.

*PMN Number P-13-471*

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

*CAS number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the substance will be as an industrial adhesive. Based on test data on analogous diisocyanates, EPA identified concerns for oncogenicity, mutagenicity, respiratory and dermal sensitization, and lung and mucous membrane irritation to workers exposed to the PMN substance. As described in the PMN, worker inhalation exposure is not expected and dermal exposure will be minimal due to the use as an intermediate and use of adequate personal protective equipment. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified particulate respirator with an APF of at least 10, where there is potential inhalation exposure, or the use of the substance in a consumer product, may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii).

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

*CFR citation:* 40 CFR 721.10723.

*PMN Number P-13-472*

*Chemical name:* Oxirane,[[2-(2-ethenyloxy)ethoxy]methyl]-.

*CAS number:* 16801–19–7.

*Basis for action:* The PMN states that the substance will be used as a site-limited intermediate to manufacture a curable monomer. Based on test data on analogous epoxides, EPA identified concerns for skin and lung sensitization, mutagenicity, oncogenicity, developmental toxicity, male reproductive, liver, and kidney toxicity to workers exposed to the PMN substance. In addition, based on analogous vinyl ethers, there were concerns for oncogenicity, reproductive toxicity, and blood toxicity. As described in the PMN, worker inhalation exposure is not expected and dermal exposure will be minimal due to the use as an intermediate and use of adequate personal protective equipment. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified respirator with an APF of at least 10, where there is potential inhalation exposure; the use of the substance without impervious gloves, where there is potential for dermal exposure; or use other than as an intermediate may cause serious health effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii).

*Recommended testing:* EPA has determined that the results of a carcinogenicity test (OPPTS Test Guideline 870.4200) and a 90-day oral toxicity in rodents test (OPPTS Test Guideline 870.3100) would help characterize the human health effects of the PMN substance.

*CFR citation:* 40 CFR 721.10724.

## V. Rationale and Objectives of the Rule

### *A. Rationale*

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for 14 of the 35 chemical substances, regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. The SNUR provisions for these chemical substances are consistent with the provisions of the TSCA section 5(e) consent orders. These SNURs are promulgated pursuant to § 721.160 (see Unit VI.).

In the other 21 cases, where the uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at § 721.170 were met, as discussed in Unit IV.

### *B. Objectives*

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

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

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

## VI. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in § 721.160(c)(3) and § 721.170(d)(4). In accordance with § 721.160(c)(3)(ii) and § 721.170(d)(4)(i)(B), the effective date of this rule is April 14, 2014 without further notice, unless EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments before March 14, 2014.

If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before March 14, 2014, EPA will withdraw the relevant sections of this direct final rule before its effective date. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30-day period for public comment.

This rule establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments, or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical

substance not identified in the comment.

## VII. Applicability of the Significant New Use Designation

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

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA section 5(e) consent orders have been issued for 14 of the 35 chemical substances, and the PMN submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which would be designated as significant new uses. The identities of 29 of the 35 chemical substances subject to this rule have been claimed as confidential and EPA has received no post-PMN *bona fide* submissions (per §§ 720.25 and 721.11). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

Therefore, EPA designates February 12, 2014 as the cutoff date for determining whether the new use is ongoing. Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified as of that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until the notice review period, including any extensions, expires. If such a person met the conditions of advance compliance under § 721.45(h), the person would be considered exempt from the requirements of the SNUR. Consult the **Federal Register** document of April 24, 1990 for a more detailed discussion of the cutoff date for ongoing uses.

## VIII. Test Data and Other Information

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

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

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

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit IV. lists those tests. Unit IV. also lists recommended testing for non-section 5(e) SNURs. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.'' The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at *http://www.oecdbookshop.org* or SourceOECD at *http://www.sourceoecd.org.*

In the TSCA section 5(e) consent orders for several of the chemical substances regulated under this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit IV. The SNURs contain the same production volume limits as the TSCA section 5(e) consent orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

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

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

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

## IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1).

Under these procedures a manufacturer or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, i.e.,

the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

## X. SNUN Submissions

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

## XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2013–0739.

## XII. Statutory and Executive Order Reviews

### *A. Executive Order 12866*

This rule establishes SNURs for several new chemical substances that were the subject of PMNs, or TSCA section 5(e) consent orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993).

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

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

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

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

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

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

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

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

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

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

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

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

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

### *E. Executive Order 13132*

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

### *F. Executive Order 13175*

This rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This rule does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this rule.

### *G. Executive Order 13045*

This action is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health

Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

*H. Executive Order 13211*

This action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

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

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

*J. Executive Order 12898*

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

**XIII. Congressional Review Act**

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

**List of Subjects**

*40 CFR Part 9*

Environmental protection, Reporting and recordkeeping requirements.

*40 CFR Part 721*

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

Dated: February 3, 2014.

**Maria J. Doa,**

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

Therefore, 40 CFR parts 9 and 721 are amended as follows:

## PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 14;9.1, add the following sections in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

| 40 CFR citation | OMB control No. |
|---|---|
| * * * * * | |
| **Significant New Uses of Chemical Substances** | |
| * * * * * | |
| 721.10695 | 2070–0012 |
| 721.10696 | 2070–0012 |
| 721.10697 | 2070–0012 |
| 721.10698 | 2070–0012 |
| 721.10699 | 2070–0012 |
| 721.10700 | 2070–0012 |
| 721.10701 | 2070–0012 |
| 721.10702 | 2070–0012 |
| 721.10703 | 2070–0012 |
| 721.10704 | 2070–0012 |
| 721.10705 | 2070–0012 |
| 721.10706 | 2070–0012 |
| 721.10707 | 2070–0012 |
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| 721.10715 | 2070–0012 |
| 721.10716 | 2070–0012 |
| 721.10717 | 2070–0012 |
| 721.10718 | 2070–0012 |
| 721.10719 | 2070–0012 |
| 721.10720 | 2070–0012 |
| 721.10721 | 2070–0012 |
| 721.10722 | 2070–0012 |
| 721.10723 | 2070–0012 |
| 721.10724 | 2070–0012 |
| * * * * * | |

## PART 721—[AMENDED]

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

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

■ 4. Add § 721.10695 to subpart E to read as follows:

**§ 721.10695 1,2,3-Propanetricarboxamide, N1,N2,N3-tris(2-methylcyclohexyl)-.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,2,3-Propanetricarboxamide, N1,N2,N3-tris(2-methylcyclohexyl)- (PMN P-08-179; CAS No. 160535-46-6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 12).

(ii) [Reserved]

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

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

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

■ 5. Add § 721.10696 to subpart E to read as follows:

**§ 721.10696 Polyfluorinated alkyl thiol (generic).**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as polyfluorinated alkyl thiol (PMNs P-11-483 and P-11-528) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of the substances is any manner or method of manufacture or processing associated with any use of the substances without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for the substances, the employer becomes aware that the substances may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If the substance(s) are not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance(s) are reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance(s) from the employer, or who have received the PMN substance(s) from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (a significant new use is any use other than as allowed by the section 5(e) consent order which includes analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), and (o) (use in a consumer product that could be spray applied).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1) and (b)(1) (at a temperature of at least 1,000 degrees C with a minimum residence time of 2 seconds).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1), except for releases allowed by the section 5(e) the consent order .

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (f), (h), (j) and (k) are applicable to manufacturers and processors of these substances.

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

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 6. Add § 721.10697 to subpart E to read as follows:

**§ 721.10697 Polyfluorinated alkyl polyamide (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyfluorinated alkyl polyamide (PMN P-11-487) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (a significant new use is any use other than as allowed by the section 5(e) consent order which includes analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), (o) (use in a consumer product that could be spray applied), (q), and (t).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1) and (b)(1) (at a temperature of at least 1,000 degrees C with a minimum residence time of 2 seconds).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1), except for releases allowed by the section 5(e) the consent order.

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

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

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

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 7. Add § 721.10698 to subpart E to read as follows:

**§ 721.10698 Polyfluorinated alkyl halide (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyfluorinated alkyl halide (PMN P-11-527) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (a significant new use is any use other than as allowed by the section 5(e) consent order which includes analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), and (o) (use in a consumer product that could be spray applied).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1) and (b)(1) (at a temperature of at least 1,000 degrees C with a minimum residence time of 2 seconds).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and

(c)(1), except for releases allowed by the section 5(e) the consent order.

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

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

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

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 8. Add § 721.10699 to subpart E to read as follows:

**§ 721.10699 Polyfluorinated alkyl thio acrylamide (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyfluorinated alkyl thio acrylamide (PMN P–11–529) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (a significant new use is any use other than as allowed by the section 5(e) consent order which includes analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), and (o) (use in a consumer product that could be spray applied).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1) and (b)(1) (at a temperature of at least 1,000 degrees C with a minimum residence time of 2 seconds).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1), except for releases allowed by the section 5(e) the consent order.

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

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

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

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 9. Add § 721.10700 to subpart E to read as follows:

**§ 721.10700 Polyfluorinated alkyl thio polyacrylamide (generic).**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as polyfluorinated alkyl thio polyacrylamide (PMNs P–11–530 and P–11–533) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of the substances is any manner or method of manufacture, or processing associated with any use of the substances without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for the substances, the employer becomes aware that the substances may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If the substance(s) is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance(s) is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance(s) from the employer, or who have received the PMN substance(s) from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (a significant new use is any use other than as allowed by the section 5(e) consent order which includes analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), (o) (use in a consumer product that could be spray applied), (q), and (t).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1) and (b)(1) (at a temperature of at least 1,000 degrees C with a minimum residence time of 2 seconds).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1), except for releases allowed by the section 5(e) the consent order.

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

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

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

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 10. Add § 721.10701 to subpart E to read as follows:

**§ 721.10701 Polyfluorinated alkyl amine (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyfluorinated alkyl amine (PMN P–11–532) is subject to reporting under this section for the

significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (a significant new use is any use other than as allowed by the section 5(e) consent order which includes analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), and (o) (use in a consumer product that could be spray applied).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1) and (b)(1) (at a temperature of at least 1,000 degrees C with a minimum residence time of 2 seconds).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1), except for releases allowed by the section 5(e) the consent order.

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

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

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

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 11. Add § 721.10702 to subpart E to read as follows:

**§ 721.10702 Polyfluorinated alkyl thio polyacrylic acid-acrylamide (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyfluorinated alkyl thio polyacrylic acid-acrylamide (PMN P–11–534) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (a significant new use is any use other than as allowed by the section 5(e) consent order which includes analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), (o) (use in a consumer product that could be spray applied), (q), and (t).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1) and (b)(1) (at a temperature of at least 1,000 degrees C with a minimum residence time of 2 seconds).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1), except for releases allowed by the section 5(e) the consent order .

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

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

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

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 12. Add § 721.10703 to subpart E to read as follows:

**§ 721.10703 Multi-walled carbon nanotubes (generic).**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as multi-walled carbon nanotubes (PMNs P–12–416, P–12–417, P–12–418, and P–12–419) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substances that have been completely reacted (cured); incorporated or embedded into a polymer matrix that itself has been completely reacted (cured); imbedded into a permanent polymer form that is not intended to undergo further processing; or incorporated into an article as defined at 40 CFR 721.3(c).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(3), (a)(4), (National Institute of Occupational Safety and Health (NIOSH)-certified air-purifying, tight-fitting full-face respirator equipped with N–100, or P–100, or R–100 filters or power air-purifying particulate respirator), (a)(6)(i), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the

operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

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

(iii) *Release to water.* Requirements as specified in § 721.90(b)(1), and (c)(1).

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

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

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

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 13. Add § 721.10704 to subpart E to read as follows:

**§ 721.10704 Aryl-substituted alkane.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an aryl-substituted alkane (PMN P–12–548) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iv), (g)(1)(ix), (g)(2)(i), (g)(2)(v), and (g)(3)(ii) and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to conduct testing on the chemical substance to comply with REACH (Regulation, Evaluation, Authorization, and Restriction of Chemicals in the European Union) without submitting all final reports and the underlying data of the testing to EPA no later than 90 days after submission of the testing to the European Union.

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

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

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

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 14. Add § 721.10705 to subpart E to read as follows:

**§ 721.10705 Aromatic amine with cyclo amino carbonyls (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aromatic amine with cyclo amino carbonyls (PMN P–12–572) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(4), (NIOSH-certified particulate respirator with an APF of at least 10), (a)(6)(i), (a)(6)(ii), (b) (concentration set 0.1 percent), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following NIOSH-certified respirators with an APF of at least 10 meet the requirements of § 721.63(a)(4):

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

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

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

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

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 11).

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

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

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

■ 15. Add § 721.10706 to subpart E to read as follows:

**§ 721.10706 Infused carbon nanostructures (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as infused carbon nanostructures (PMN P–12–576) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is any manufacturing process other than that described in the premanufacture notice (PMN) which includes the incorporation of the PMN substance into pellets.

(ii) [Reserved]

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

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

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

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 16. Add § 721.10707 to subpart E to read as follows:

**§ 721.10707 Substituted benzyl acrylate (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as substituted benzyl acrylate (PMN P–13–127) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph.

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

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

■ 17. Add § 721.10708 to subpart E to read as follows:

**§ 721.10708 Zirconium substituted heteropolycyclic (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as zirconium substituted heteropolycyclic (PMN P–13–152) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

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

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

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

■ 18. Add § 721.10709 to subpart E to read as follows:

**§ 721.10709 Alkylphenol (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylphenol (PMN P–13–168) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

(ii) [Reserved]

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

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

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

■ 19. Add § 721.10710 to subpart E to read as follows:

**§ 721.10710 4, 7-Methano-1H-indene, 3a, 4, 7, 7a-tetrahydro-, polymer with 2-methyl-1, 3-butadiene and 5-(1-methylethenyl)bicyclo[2.2.1]hept-2-ene.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 4, 7-methano-1H-indene, 3a, 4, 7, 7a-tetrahydro-, polymer with 2-methyl-1, 3-butadiene and 5-(1-methylethenyl)bicyclo[2.2.1]hept-2-ene (PMN P–13–192; CAS No. 1412159–51–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

(ii) [Reserved]

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

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

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

■ 20. Add § 721.10711 to subpart E to read as follows:

**§ 721.10711 Alkyl substituted catechol (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl substituted catechol (PMN P–13–197) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(4) (NIOSH-certified particulate respirator with an APF of at least 1,000), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., place policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following NIOSH-certified respirators with an APF of at least 1,000 meet the requirements of § 721.63(a)(4);

(A) NIOSH-certified continuous flow supplied-air respirator equipped with a full face piece.

(B) NIOSH-certified pressure-demand supplied-air respirator equipped with a full face piece.

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

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=20).

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

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

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

■ 21. Add § 721.10712 to subpart E to read as follows:

**§ 721.10712 Antimony tris(dialkyldithiocarbamate) (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as antimony tris(dialkyldithiocarbamate) (PMN P–13–217) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

(ii) [Reserved]

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

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

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

■ 22. Add § 721.10713 to subpart E to read as follows:

**§ 721.10713 Antimony tris(dialkyldithiocarbamate) (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as antimony tris(dialkyldithiocarbamate) (PMN P–

13–259) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

(ii) [Reserved]

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

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

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

■ 23. Add § 721.10714 to subpart E to read as follows:

**§ 721.10714 Zinc bis(dialkyldithiocarbamate) (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as zinc bis(dialkyldithiocarbamate) (PMN P–13–260) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=7).

(ii) [Reserved]

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

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

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

■ 24. Add § 721.10715 to subpart E to read as follows:

**§ 721.10715 Carbonic acid, dialkyl ester (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carbonic acid, dialkyl ester (PMN P–13–346) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (j), and (s) (100,000 kilograms).

(ii) [Reserved]

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

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

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

■ 25. Add § 721.10716 to subpart E to read as follows:

**§ 721.10716 Phenol, 2,6-dimethyl-, homopolymer, ether with 2,2',3,3',5,5'-hexamethyl[1,1'-biphenyl]-4,4'-diol (2:1),bis[(ethenylphenyl)methyl] ether.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phenol, 2,6-dimethyl-, homopolymer, ether with 2,2',3,3',5,5'-hexamethyl[1,1'-biphenyl]-4,4'-diol (2:1),bis[(ethenylphenyl)methyl] ether (PMN P–13–355, CAS No. 558452–77–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=2).

(ii) [Reserved]

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

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

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

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

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

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

(2) The significant new uses are:

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

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

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

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

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

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

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

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

■ 27. Add § 721.10718 to subpart E to read as follows:

**§ 721.10718 Substituted picolinic acid (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted picolinic acid (PMN P–13–374) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is any use other than as a pesticide intermediate.

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in

§ 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

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

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

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

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

(2) The significant new uses are:

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

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

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

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

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

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

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

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

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

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

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

(2) The significant new uses are:

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

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

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

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

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

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

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

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

■ 30. Add § 721.10721 to subpart E to read as follows:

**§ 721.10721 Poly(oxy-1,2-ethanediyl), .alpha.,.alpha.′-[(1-methylethylidene)di-4,1-phenylene]bis[.omega.-[[6-(2,5-dihydro-2,5-dioxo-1H-pyrrol-1-yl)-1-oxohexyl]oxy]-.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as poly(oxy-1,2-ethanediyl), .alpha.,.alpha.′-[(1-methylethylidene)di-4,1-phenylene]bis[.omega.-[[6-(2,5-dihydro-2,5-dioxo-1H-pyrrol-1-yl)-1-oxohexyl]oxy]- (PMN P–13–455) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

(ii) [Reserved]

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

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

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

■ 31. Add § 721.10722 to subpart E to read as follows:

**§ 721.10722 Oxirane,2-[(1-propen-1-yloxy)methyl]-.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as oxirane,2-[(1-propen-1-yloxy)methyl]- (PMN P–13–468; CAS No. 1607–23–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(6)(ii), (a)(6)(v), (b)(1) (concentration set at 0.1 percent), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following NIOSH-certified respirators with an APF of at least 10 meet the requirements of § 721.63(a)(4):

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

helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

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

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

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

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e) and (i) are applicable to manufacturers and processors of this substance.

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

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

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

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

(2) The significant new uses are:

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

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

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

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

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

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

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

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

■ 33. Add § 721.10724 to subpart E to read as follows:

**§ 721.10724 Oxirane, [[2-(2-ethenyloxy)ethoxy]methyl]-.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as oxirane, [[2-(2-ethenyloxy)ethoxy]methyl]- (PMN P–13–472; CAS No. 16801–19–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(6)(ii), (a)(6)(v), (b)(concentration set at 0.1 percent), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following NIOSH-certified respirators with an APF of at least 10 meet the requirements of § 721.63(a)(4):

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

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

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

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

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e) and (i) are applicable to manufacturers and processors of this substance.

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

[FR Doc. 2014–03079 Filed 2–11–14; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 174

**[EPA–HQ–OPP–2013–0704; FRL–9905–59]**

### Bacillus thuringiensis Cry1F Protein in Soybean; Exemption From the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of the plant-incorporated protectant (PIP), *Bacillus thuringiensis* Cry1F protein, in or on the food commodity soybean. Dow AgroSciences LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* Cry1F protein in soybean under the FFDCA.

**DATES:** This regulation is effective February 12, 2014. Objections and requests for hearings must be received on or before April 14, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0704, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP

Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:**

Denise Greenway, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; email address: *greenway.denise@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

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

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

You may access a frequently updated electronic version of 40 CFR part 174 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0704 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 14, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0704, by one of the following methods:

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

## II. Background and Statutory Findings

In the **Federal Register** of November 22, 2013 (78 FR 70007) (FRL–9902–96), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 2F8066) by Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. The petition requested that 40 CFR part 174 be amended by establishing an exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* Cry1F protein in or on the food commodity soybean. That document referenced a summary of the petition prepared by the petitioner, Dow AgroSciences LLC, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Exemptions from the requirement of a tolerance currently exist for residues of *Bacillus thuringiensis* Cry1F protein in cotton (40 CFR 174.504) and corn (40 CFR 174.520). EPA is establishing an exemption for residues of *Bacillus thuringiensis* Cry1F protein in soybean by amending the existing exemption in § 174.504 to add soybean commodities. In addition, as a housekeeping measure, EPA is consolidating the existing exemptions for *Bacillus thuringiensis* Cry1F protein into one regulatory provision without making any substantive alterations in the existing exemptions.

## III. Final Rule

### *A. The EPA's Safety Determination*

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

EPA evaluated the available toxicity and exposure data on *Bacillus thuringiensis* Cry1F protein and considered its validity, completeness, and reliability, as well as the relationship of this information to human risk. Based upon that evaluation, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Bacillus thuringiensis* Cry1F protein. Therefore, an exemption from the requirement of a tolerance is established for residues of *Bacillus thuringiensis* Cry1F protein in or on the food commodity soybean, when used as a PIP in soybean and in accordance with label directions and good agricultural practices. A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found in a January 13, 2014 document entitled, ''Federal Food, Drug, and

Cosmetic Act (FFDCA) Considerations for *Bacillus thuringiensis* Cry1F Protein.'' This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES.**

*B. Analytical Enforcement Methodology*

EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation. An analytical method for enforcement purposes was, however, submitted by Dow AgroSciences LLC and determined by the Agency to be suitable for quantitative measurements of the Cry1F protein in soybean tissue. The Dow AgroSciences LLC Cry1F Enzyme-Linked Immunosorbent Assay (ELISA) method is fully discussed in the January 13, 2014 document entitled, ''Federal Food, Drug and Cosmetic Act (FFDCA) Considerations for *Bacillus thuringiensis* Cry1F Protein.''

**IV. Statutory and Executive Order Reviews**

This final rule establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

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

**V. Congressional Review Act**

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

**List of Subjects in 40 CFR Part 174**

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

Dated: January 30, 2014.

**Steven Bradbury,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

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

■ 2. Revise § 174.504 to read as follows:

**§ 174.504 *Bacillus thuringiensis* Cry1F protein; exemption from the requirement of a tolerance.**

Residues of *Bacillus thuringiensis* Cry1F protein in the food and feed commodities of corn, field; corn, sweet; corn, pop; cotton; and soybean are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in corn, field; corn, sweet; corn, pop; cotton, and soybean.

**§ 174.520 [Removed]**

■ 3. Remove § 174.520.

[FR Doc. 2014–02932 Filed 2–11–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2012–0925; FRL–9904–22]**

## Thiram; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of thiram in or on strawberry. Taminco, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective February 12, 2014. Objections and requests for hearings must be received on or before April 14, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0925, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

**FOR FURTHER INFORMATION CONTACT:** Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington,

DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*. To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0925 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 14, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0925, by one of the following methods:

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

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

## II. Summary of Petitioned-for Tolerance

In the **Federal Register** of January 16, 2013 (78, FR 3379) (FRL–9375–4), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F8106) by Taminco, Inc., 7540 Windsor Drive, Suite 411, Allentown, PA 18195. The petition requested that 40 CFR 180.132 be amended by increasing the level of the tolerance for residues of the fungicide thiram, in or on strawberry to 20 parts per million (ppm). This request was made to support a change in the preharvest interval (PHI) from 3 days to 1 day for strawberry on the label for Spotrete-F (EPA Reg. No. 45728–26). That document referenced a summary of the petition prepared by Taminco, Inc., the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for thiram including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with thiram follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Thiram is a dimethyl dithiocarbamate fungicide. Thiram has been shown to cause neurotoxicity following acute and subchronic exposures. In the acute and subchronic neurotoxicity studies submitted, neurotoxicity is characterized as lethargy, reduced and/or tail pinch response, changes in the functional-observation battery (FOB) parameters, increased hyperactivity, changes in motor activity, and increased occurrences of rearing events. No treatment-related changes were observed in brain weights or in the histopathology of the nervous system. In a non-guideline study published in the open literature, chronic feeding of thiram to rats caused neurotoxicity, with onset of ataxia in some animals 5–19 months after beginning of treatment. However, no evidence of neurotoxicity was seen following chronic exposures in mice or rats in guideline studies submitted to the Agency. In addition, no adverse effects on the developing fetal nervous system were seen in a DNT study. The chronic toxicity profile for thiram indicates that the liver, blood, and urinary system are the target organs for this chemical in mice, rats, and dogs. There is no evidence for increased

susceptibility following *in utero* exposures to rats or rabbits and following pre- and post-natal exposures to rats for two generations. There is evidence of quantitative susceptibility in the developmental neurotoxicity (DNT) study. However, there is low concern for the increased susceptibility seen in the DNT study since the dose response is well defined with a clear NOAEL and this endpoint is used for assessing the acute dietary risk for the most sensitive population. Thiram is classified as ''not likely to be carcinogenic to humans'' based on lack of evidence for carcinogenicity in mice or rats. There are no mutagenic/genotoxic concerns with thiram. The available toxicological database for thiram suggests that this chemical has a low to moderate acute-toxicity profile.

Specific information on the studies received and the nature of the adverse effects caused by thiram as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document Thiram. Update to the Aggregate Risk Assessment to Support the Requested PHI Reduction and Increased Tolerance Request on Strawberry at page 9 in docket ID number EPA–HQ–OPP–2012–0925.

*B. Toxicological Points of Departure/Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR THIRAM FOR USE IN HUMAN HEALTH RISK ASSESSMENT

| Exposure/Scenario | PoD | Uncertainty/FQPA SFs | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|---|
| Acute Dietary (General Population). | $BMDL_{10}$ = 64.94 mg/kg. | $UF_A$ = 10x .....<br>$UF_H$ = 10x<br>FQPA SF = 1x | Acute RfD = 0.6494 mg/kg/day.<br>aPAD = 0.6494 mg/kg/day | Acute Neurotoxicity Study—Rat. MRID 42912401.<br>LOAEL = 150 mg/kg/day based on FOB effects (lethargy, lower temperature, reduced startle response, no tail-pinch response), reduced motor activity, and reduced brain weights. |
| Acute Dietary (Females 13–49 years old). | NOAEL = 1.4 mg/kg | $UF_A$ = 10x .....<br>$UF_H$ = 10x<br>FQPA SF = 1x | Acute RfD = 0.014 mg/kg/day.<br>aPAD = 0.014 mg/kg/day | Dev. Neurotoxicity Study—Rat. MRID 46455201.<br>LOAEL = 3.7 mg/kg/day based on increases in motor activity seen in female offspring on PND 17. |
| Chronic Dietary (All populations). | NOAEL = 1.5 mg/kg | $UF_A$ = 10x .....<br>$UF_H$ = 10x<br>FQPA SF = 1x | Chronic RfD = 0.015 mg/kg/day.<br>cPAD = 0.015 mg/kg/day. | Co-critical: (1) Combined Chronic Toxicity/Carcinogenicity Study—Rat and (2) Chronic Oral Toxicity-Dog.<br>LOAEL = 7.3 mg/kg/day based on changes in hematology, clinical chemistry, incidences of bile duct hyperplasia, and reduction in mean body-weight gain from the chronic toxicity/carcinogenicity rat study in conjunction with elevated cholesterol levels and increased liver weights reported in the Chronic Oral Toxicity Study in Dogs at a LOAEL = 7.23 mg/kg/day. |
| Short- and Intermediate-Term Incidental Oral. | No incidental oral residential exposure. | | | |
| Short-Term Dermal (1–30 days). | NOAEL = 1.4 mg/kg/day. | $UF_A$ = 10x .....<br>$UF_H$ = 10x<br>FQPA SF = 1x (Dermal-absorption factor = 1%) | Residential LOC for MOE = 100.<br>Occupational LOC for MOE = 100 | Dev. Neurotoxicity Study—Rat MRID 46455201.<br>LOAEL = 3.7 mg/kg/day based on increases in motor activity seen in female offspring on PND 17. |
| Intermediate-Term Dermal (1 to 6 months). | NOAEL = 1.4 mg/kg/day. | $UF_A$ = 10x .....<br>$UF_H$ = 10x<br>FQPA SF = 1x (Dermal-absorption factor = 1%) | Residential LOC for MOE = 100.<br>Occupational LOC for MOE = 100 | Dev. Neurotoxicity Study—Rat MRID 46455201.<br>LOAEL = 3.7 mg/kg/day based on increases in motor activity seen in female offspring on PND 17. |

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR THIRAM FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

| Exposure/ Scenario | PoD | Uncertainty/FQPA SFs | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|---|
| Short- and Intermediate-Term Inhalation. | Current assessment does not warrant an inhalation assessment. | | | |
| Cancer (oral, dermal, inhalation). | "Not Likely to be Carcinogenic to Humans". | | | |

Point of Departure (PoD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. $UF_A$ = extrapolation from animal to human (intraspecies). $UF_H$ = potential variation in sensitivity among members of the human population (interspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population-adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to thiram, EPA considered exposure under the petitioned-for tolerances as well as all existing thiram tolerances in 40 CFR 180.132. EPA assessed dietary exposures from thiram in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

A refined probabilistic acute dietary exposure assessment was performed using maximum percent crop treated *(PCT)* values, tolerance, the highest residue found during field-trials, distribution of field trial residues, Federal Drug Administration (FDA) monitoring data for apples, and empirical processing factors. Dietary risk estimates were determined considering exposures from food and drinking water using estimated drinking water concentrations (EDWCs) for surface water sources.

ii. *Chronic exposure.* A refined chronic dietary-exposure assessment was performed using tolerance level residues and average estimated PCT.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has classified thiram as ''Not Likely to be Carcinogenic to Humans,'' therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT in the acute dietary risk assessment for existing uses as follows apples: 10%; peaches: 2.5%; and strawberry: 30%. The Agency estimated the PCT in the chronic dietary risk assessments for existing uses as follows apples: 5%; peaches: 1.0%; and strawberry: 20%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which chemical name may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment

for thiram in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of thiram. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of thiram for acute exposures are 0.0478 parts per billion (ppb) and 0.0025 ppb for chronic exposures (for non-cancer assessments) for surface water. Ground water sources were not included (for acute or chronic exposures), as the EDWCs for ground water are minimal in comparison to those for surface water. Surface water EDWCs were incorporated in DEEM–FCID into the food categories ''water, direct, all sources'' and ''water, indirect, all sources'' for the dietary assessments.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Thiram is not available for sale or use by homeowner applicators; therefore, there are no residential handler exposure scenarios applicable to thiram. However, there is potential for residential post-application dermal exposure from treated golf course greens and tees. Residential exposures resulting from dermal contact with thiram-treated turf were assessed for children 6 to <11 years old, children 11 to <16 years old, and adults. When use is restricted to greens and tees, the duration of exposure is 1 hour to reflect the anticipated time a player would be spending in contact with those areas. Inhalation post-application exposures for golf courses were not assessed since inhalation exposures are thought to be negligible in outdoor post-application scenarios.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

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

### *D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There was no evidence of increased susceptibility following *in utero* exposure to rats or rabbits or following pre- and post natal exposures to rats. There is evidence of quantitative susceptibility in the DNT study. Offspring effects (increased locomotor activity in females on PND 17) occurred at a lower dose than maternal effects (increased number of rearing events and elevated incidences of hyperactivity in females at weeks 8 and 13). There is low concern for the enhanced susceptibility seen in the DNT study because: (1) Clear NOAELs/LOAELs were established for the offspring effects; (2) the dose-response is well defined; (3) the behavioral effect of concern were observed only in females on one evaluation time period; and (4) the dose/endpoint is used for acute dietary risk for the most sensitive population subgroup (females 13–49 years old). Consequently, there are no residual uncertainties for pre- and post-natal toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for thiram is complete with acceptable neurotoxicity, developmental, and reproductive toxicity studies.

ii. Thiram has been shown to cause neurotoxicity following acute and subchronic exposures only. There was no evidence of increased susceptibility following *in utero* exposure to rats or rabbits or following pre- and post-natal exposures to rats. Evidence of quantitative susceptibility was demonstrated in the DNT study; however, there is low concern for the susceptibility seen in the DNT study because clear NOAELs/LOAELs were established for the offspring effects, the dose-response is well defined, and the dose/endpoint is used for acute dietary risk for the most sensitive population (females 13–49 years old) and therefore is protective. Consequently, there are no residual uncertainties for pre- and post-natal toxicity.

iii. There is no other evidence that thiram results in increased susceptibility in *in utero,* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study, only in the DNT.

iv. There are no residual uncertainties identified in the exposure databases. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to thiram in drinking water. In addition, the acute dietary exposure analysis used FDA apple monitoring data and field trial data along with the maximum percent crop treated. The chronic dietary exposure analysis used tolerance level residues except for apple along with the average percent crop treated. In addition, washing studies were incorporated into the dietary analyses since thiram is not a systemic pesticide and will wash off during normal washing procedures. These assessments will not underestimate the exposure and risks posed by thiram.

### *E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute

exposure estimates from dietary consumption of food and drinking water. Using DEEM–FCID™, acute dietary exposure at the 99.9th exposure percentile is estimated at 0.020104 mg/kg bw/day for the general U.S. population (3.1% of the aPAD) and 0.010887 mg/kg bw/day (78% of the aPAD) for females 13–49 years old, the population subgroup with the highest estimated acute dietary exposure to thiram.

2. *Chronic risk.* The chronic aggregate risk assessment takes into account exposure estimates from dietary consumption of thiram (food and drinking water). Dietary risk estimates were determined considering exposures from food and drinking water using EDWCs for surface water sources. Using DEEM–FCID™, dietary exposure is estimated at 0.001384 mg/kg bw/day for the general U.S. population (9.2% of the cPAD) and 0.008369 mg/kg bw/day (56% of the cPAD) for children 1–2 years old, the population subgroup with the highest estimated chronic dietary exposure to thiram.

3. *Short-term and Intermediate-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

In aggregating short- and intermediate-term risk, the Agency routinely combines background chronic dietary exposure (food + water) with short/intermediate-term residential exposure (dermal only). The combined exposure may then be used to calculate an MOE for aggregate risk. Using the golfer scenario for adult males, adult females, and children >6 years old, combined with the applicable subpopulation with the greatest dietary exposure, the total short/intermediate-term food and residential aggregate MOEs are 600, 600, and 370, respectively. As these MOEs are greater than 100, the short- and intermediate-term aggregate risks do not exceed the Agency's LOC. For children <6 years old, there is no residential exposure, therefore, a short/intermediate term aggregate risk assessment is not required for this population.

4. *Aggregate cancer risk for U.S. population.* Thiram is classified as ''Not Likely to be Carcinogenic to Humans'' based on lack of evidence for carcinogenicity in mice or rats; therefore, thiram is not expected to pose a cancer risk.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to thiram residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (colorimetric analytical method) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

### *B. International Residue Limits*

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

The Codex has established MRLs for ''total dithiocarbamates, determined and expressed as mg carbon disulfide per kg'' in or on strawberry at 5 ppm. This MRL differs from the tolerance amendment for thiram on strawberry that was requested by the petitioner. As U.S. tolerances are currently established on the individual dithiocarbamates, compatibility is not possible with the proposed tolerances. EPA is considering modifying all tolerances for dithiocarbamates, including thiram, to express them in terms of carbon disulfide. At that time, the tolerance expression will be compatible with CODEX; however, the U.S. tolerance level for strawberry cannot be harmonized with the CODEX MRL level because of differences in agricultural practices between the U.S. and foreign countries where strawberries are grown. Actual residues seen in the U.S. field trials submitted to support the proposed strawberry tolerance amendment exceeded the CODEX MRL.

### *C. Revisions to Petitioned-for Tolerances*

The Agency has revised the tolerance expression to clarify:

1. That, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of thiram not specifically mentioned.

2. That compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

## V. Conclusion

Therefore, the tolerance for residues of thiram, in or on strawberry, is amended to increase the level of the tolerance to 20 ppm.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power

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

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

### VII. Congressional Review Act

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

### List of Subjects in 40 CFR Part 180

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

Dated: January 27, 2014.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

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

■ 2. In § 180.132, revise the introductory text of paragraph (a) and revise the entry for ''Strawberry'' in the table in paragraph (a) to read as follows:

**§ 180.132 Thiram; tolerances for residues.**

(a) *General.* Tolerances for residues of the fungicide thiram (tetramethyl thiuram disulfide), including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified is to be determined by measuring only thiram.

| Commodity | Parts per million | Expiration/ revocation date |
|---|---|---|
| * * * | * | * |
| Strawberry ..... | 20 | None. |

* * * * *

[FR Doc. 2014–03074 Filed 2–11–14; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2012–0791; FRL–9905–22]**

## Linuron; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of linuron in or on multiple commodities which are identified and discussed later in this document. This regulation additionally removes a tolerance with regional registrations in or on parsley leaves, as it will be superseded by a tolerance without regional registrations. IR–4 requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective February 12, 2014. Objections and requests for hearings must be received on or before April 14, 2014, and must be filed in accordance with instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0791, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

**FOR FURTHER INFORMATION CONTACT:** Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*.

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0791 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 14, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0791, by one of the following methods:

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

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

## II. Summary of Petitioned-for Tolerance

In the **Federal Register** of November 7, 2012 (77 FR 66781) (FRL–9367–5), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E8083) by IR–4, 500 College Road East, Suite 201 W., Princeton, NJ 08540. The petition requested that 40 CFR 180.184 be amended by establishing tolerances for residues of the herbicide linuron, 3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea), and its metabolites, in or on cilantro, dried leaves at 27 parts per million (ppm); cilantro, fresh leaves at 3 ppm; dillweed, dried leaves at 7.1 ppm; dillweed, fresh leaves at 1.5 ppm; dill oil at 4.8 ppm; dill seed at 0.3 ppm; horseradish at 0.050 ppm; parsley, dried leaves at 8.3 ppm; parsley leaves at 3 ppm; and pea, dry, seed at 0.08 ppm. The petition additionally requested to delete the regional tolerance in 40 CFR 180.184(c) for residues of linuron in or on parsley, leaves at 0.25 ppm upon approval of the requested tolerances for parsley leaves. That document referenced a summary of the petition prepared on behalf of IR–4 by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, *http://www.regulations.gov*. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Subsequent to the publication of the November 7, 2012 **Federal Register** notice, the petitioner submitted a second petition, in which it requested again the same tolerances noticed in the November 7, 2012 **Federal Register** document and added a new request for a tolerance for residues of linuron and its metabolites in or on coriander seed at 0.01 ppm. So, in the **Federal Register** of July 19, 2013 (78 FR 43115) (FRL–9392–9), EPA issued another document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E8083) by IR–4, seeking tolerances for commodities as noted in the November 7, 2012 document as well as a tolerance for coriander seed at 0.01 ppm. That document referenced a summary of the petition prepared on behalf of IR–4 by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the tolerances for several proposed commodities. The Agency has also determined that the tolerance expression should be revised for all commodities. The reasons for these changes are explained in Unit IV.D.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for linuron including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with linuron follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

With repeated dosing in test animals, linuron produces two primary effects: (1) Changes in the hematopoetic system in rats, mice, and dogs and; (2) changes in the male reproductive system in developing rats. Lowest observed adverse effect levels (LOAELs) for hematological effects produced by linuron were substantially lower than LOAELs for reproductive effects. Dogs were shown to be most sensitive to the hematological effects, including hemolytic anemia characterized by slightly reduced hemoglobin, hematocrit, and erythrocyte counts accompanied by hemosiderin deposition in liver Kupffer cells. Secondary erythropogenic activity (erythroid hyperplasia of bone marrow) was also found. Systemic toxicity observed in mice included increased methemoglobin formation, vacuolation and hemosiderosis of the spleen, and decreased erythrocyte counts. In the chronic rat study, microscopic observations consistent with hemolysis (hemosiderin in Kupffer cells and increased hemosiderosis in bone marrow, spleen, and/or mesenteric lymph nodes) were found.

The rat developmental study showed increased post-implantation loss, fetal resorptions, decreased litter size, and decreased fetal body weight. In the rabbit developmental toxicity study, an increased incidence of fetuses with skeletal skull variations was found. In the 2-generation reproductive toxicity study, rats exposed to linuron during both development and adulthood had gross lesions of the testes (including reduction in size); abnormally soft and small epididymides, deformities of the epididymides, decreased pup survival, decreased weanling body weights, decreased liver and kidney weights; and increased incidence of offspring liver atrophy.

The developmental effects on the reproductive system seen in the guideline studies are consistent with those reported in the published literature, though it should be noted that most of the literature studies employed dose levels of 100 milligrams/kilogram (mg/kg) or greater. The available data indicate that linuron inhibits transcriptional activity of dihydrotestosterone (DHT), human androgen receptor (hAR) *in vitro,* and steroidogenic enzymes. Additional findings indicate that linuron exposure decreases anogenital distance; may increase retention of areole/nipples in male rat offspring following *in utero* exposure; increases luteinizing hormone (LH) levels in F0 and F1 male rats; reduces the size of androgen dependent tissues such as seminal vesicles, epididymis, and ventral prostate; and demonstrates a weak affinity for androgen receptors, which may decrease fetal testosterone synthesis (Refs 1, 2, 3, and 4). At this time, linuron has not been demonstrated to be an estrogen receptor antagonist (Ref 5). It should be emphasized that the toxicity endpoints based on the hematological effects for chronic exposures were derived from the chronic oral toxicity study in dogs. The point of departure (POD) for hematological effects was approximately 40X lower than the LOAEL that caused the testicular effects seen in the rat reproduction toxicity study.

In rat and mouse carcinogenicity studies, linuron induced interstitial cell adenomas in the testes of rats and hepatocellular adenomas in mice. In a special study with aged rats, linuron induced hyperplasia and adenomas of the testes within 6 to 12 months. However, EPA has concluded that quantification of cancer risk is not necessary because both interstitial cell adenomas and hepatocellular adenomas were benign and show no progression towards malignancy. In addition, linuron was not mutagenic in bacteria or in cultured mammalian cells. There was also no indication of a clastogenic effect up to toxic doses *in vivo.* Finally, the cRFD is a NOAEL of 0.77 mg/kg/day, which would be protective of any tumors caused by linuron in the rat and mouse carcinogenicity study at higher doses.

At the highest dose tested, the acute neurotoxicity study demonstrated that linuron produced changes in the parameters of the field observation battery (FOB). These changes included rats holding their heads low, crusty deposits on the nose, impaired mobility, ataxia, low arousal, decreased rearing, no reaction to tail pinch or startle, decreased righting reflex, reduced or no hindlimb extensor strength, decreased grip strength in both hindlimbs and forelimbs, reduced rotarod performance, decreased hindlimb footsplay, and increased catalepsy. At the lowest-observed-adverse-effect-level (LOAEL), linuron produced decreases in motor activity and rearing. No compound-related changes in neurohistopathology were observed at any of the tested dose levels. In addition, linuron did not show any signs of immunotoxicity in the submitted immunotoxicity study up to the highest dose tested.

Specific information on the studies received and the nature of the adverse effects caused by linuron as well as the no-observed-adverse-effect-level (NOAEL) and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in document: ''Linuron: Section 3 Human Health Risk Assessment for Proposed Use on Coriander, Dill, Horseradish, Parsley, Celeriac, Rhubarb, and Pea (Dry).'' at pages 33–38 in docket ID number EPA–HQ–OPP–2012–0791. References for the published toxicity studies cited in this section may be found Unit VI.

*B. Toxicological Points of Departure/Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.* A summary of the toxicological endpoints for linuron used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR LINURON FOR USE IN HUMAN HEALTH RISK ASSESSMENT

| Exposure/scenario | Point of departure and uncertainty/safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Acute dietary (Females 13–49 years of age). | NOAEL = 12 mg/kg/day<br>$UF_A$ = 10X<br>$UF_H$ = 10X<br>FQPA SF = 1X | Acute RfD = 0.12 mg/kg/day<br>aPAD = 0.12 mg/kg/day | Rat Developmental Toxicity.<br>LOAEL = 50 mg/kg/day based on increased post-implantation loss and fetal/litter resorptions. |
| Acute dietary (General population including infants and children). | NOAEL = 20 mg/kg/day.<br>$UF_A$ = 10X<br>$UF_H$ = 10X<br>FQPA SF = 1X | Acute RfD = 0.2 mg/kg/day.<br>aPAD = 0.2 mg/kg/day | Acute Neurotoxicity Study (Rat).<br>LOAEL = 100 mg/kg based on decreases in rearing and in motor activity. |
| Chronic dietary (All populations) ..... | NOAEL= 0.77 mg/kg/day.<br>$UF_A$ = 10X<br>$UF_H$ = 10X<br>FQPA SF = 1X | Chronic RfD = 0.0077 mg/kg/day.<br>cPAD = 0.0077 mg/kg/day | Chronic Oral Dog Study.<br>LOAEL = 3.5 mg/kg/day based on hematological effects (increased met- and sulf-hemoglobin levels). |

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR LINURON FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

| Exposure/scenario | Point of departure and uncertainty/ safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Cancer (Oral, dermal, inhalation) ..... | Quantification of human cancer risk is not necessary for reasons stated in Unit III.A. | | |

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligrams/kilogram/day. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. $UF_A$ = extrapolation from animal to human (interspecies). $UF_H$ = potential variation in sensitivity among members of the human population (intraspecies).

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to linuron, EPA considered exposure under the petitioned-for tolerances as well as all existing linuron tolerances in 40 CFR 180.184. EPA assessed dietary exposures from linuron in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for linuron. In estimating acute dietary exposure, EPA used Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16, which uses food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, ''What We Eat in America'' (NHANES/WWEIA) from 2003 through 2008. As to residue levels in food, EPA utilized tolerance-level residues, DEEM (Ver. 7.81) default processing factors as necessary, and 100 percent crop treated (PCT) for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment. EPA used the food consumption data from the USDA's 2003–2008 NHANES/WWEIA. As to residue levels in food, EPA used tolerance-level residues for all commodities, and DEEM default processing factors. The Agency utilized average PCT estimates, when available, and 100 PCT for all other commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a cancer exposure assessment is not necessary.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the average PCT for existing uses for use in the chronic dietary assessment as follows:

Asparagus, 25%; carrots, 85%; celery, 25%; corn, 1.0%; cotton, 1.0%; potatoes, 5.0%; sorghum, 1.0%; soybeans, 1.0%; sweet corn, 1.0%; and wheat, 1.0%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which linuron may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for linuron in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of linuron. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of linuron for surface water are estimated to be 89.05 parts per billion (ppb) for acute exposures and 48.69 ppb for chronic exposures for non-cancer assessments. The EDWCs of linuron for groundwater are estimated to be 48.8 ppb for acute

and chronic exposures for non-cancer assessments.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 89.05 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 48.8 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Linuron is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found linuron to share a common mechanism of toxicity with any other substances, and linuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that linuron does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

### *D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The following acceptable studies are available to assess the prenatal and postnatal sensitivity to linuron: rat and rabbit developmental toxicity studies, a 2-generation rat reproductive toxicity study, and a 3-generation rat reproductive toxicity study. There is no qualitative or quantitative evidence of increased susceptibility of rabbits in the developmental study; developmental effects were seen at a dose higher than those causing maternal toxicity. In the rat developmental study, increases in post-implantation losses and increases in fetal resorptions/litter were seen at a dose that caused decreases in maternal body weight and food consumption. Since increases in resorptions were marginal and there was no change in the number of live fetuses to corroborate the increases in post-implantation losses, these effects were not indicative of qualitative evidence of susceptibility.

There was no quantitative evidence of susceptibility in either the 2-generation or the 3-generation reproduction studies. In the 2-generation study, reduced body weight gains of pups were seen at the same dose that caused decreases in parental body weights. In the 3-generation study, offspring effects including deceased pup survival and pup body weight were seen a dose (44 mg/kg/day) higher than the dose that caused decreases in body weight gain in the parental animals (9 mg/kg/day). However, when reproductive effects were examined, testicular atrophy was seen at the same dose (45 mg/kg/day) in both studies. In both studies, while the F0 males were not affected, testicular lesions and reduced fertility were seen in the F1 males. This effect in the F1 males is an indication of qualitative evidence of susceptibility.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for linuron is complete.

ii. In an acute neurotoxicity study, FOB findings of impaired mobility, alterations in gait, lack of coordination, lowered body temperature, no reaction to stimuli, low arousal, and decreases in motor activity were seen at the time of peak effect (7 hours post dosing) on study day 0. These observations were mostly seen in the 500 mg/kg group and no pathological changes were found in nervous system tissues. A clear NOAEL (20 mg/kg/day) was established, and this NOAEL was approximately 2–26X greater than most PODs selected for risk assessment. The nervous system was not a target organ for linuron. The requirement of a subchronic neurotoxicity study was waived by the Agency because the target systems for linuron toxicity are the hematopoietic and endocrine systems and not the nervous system as shown by all available/required toxicity studies. There is no need for a developmental neurotoxicity study because linuron affects testes and hematological parameters but did not produce an increased susceptibility in young rats. Therefore, the concern for neurotoxicity is low, and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that linuron results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies. While increased qualitative susceptibility was identified from the reproductive findings in the 2-generation and 3-generation rat toxicity studies, clear NOAELs were established for the effects on the reproductive system. Furthermore, the point of departure (POD) selected for assessment of chronic effects, is approximately 40X lower than the LOAEL that caused the testicular effects seen in the rat reproduction toxicity study; therefore, EPA considers the PODs for risk assessment to be protective of the effects seen on the male reproductive system and an additional safety factor to account for this qualitative susceptibility is not necessary.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on tolerance-level residues, 100 PCT for the acute assessment and average PCT for available commodities in the chronic dietary assessment. EPA made conservative (protective) assumptions in the ground-water and surface water modeling used to assess exposure to linuron in drinking water. These assessments will not underestimate the exposure and risks posed by linuron.

### *E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and

residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to linuron will occupy 10% of the aPAD for all infants less than 1 year old, the most highly exposed U.S. population subgroup; and 5.7% of the aPAD for females 13–49 years old.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to linuron from food and water will utilize 60% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for linuron.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Short- and intermediate-term adverse effects were identified; however, linuron is not registered for any use patterns that would result in short- or intermediate-term residential exposure. Short- and intermediate-term risk is assessed based on short- and intermediate-term residential exposure plus chronic dietary exposure. Because there are no short- or intermediate-term residential exposures and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short- or intermediate-term risks), no further assessments of short- or intermediate-term risk are necessary, and EPA relies on the chronic dietary risk assessment for evaluating the short- and intermediate-term risks for linuron.

4. *Aggregate cancer risk for U.S. population.* Based on the discussion of carcinogenicity for linuron in Unit III.A., EPA has concluded that the cPAD is protective of possible cancer effects. Given the results of the chronic risk assessment, EPA has concluded that linuron does not pose a cancer risk.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to linuron residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology, Method ABC–68406–M, is available to enforce the tolerance expression. This method involves reflux of crop samples in strong base to hydrolyze residues of linuron and its metabolites to 3,4-DCA, which is analyzed using gas chromatography/mass spectrometry (GC/MS).

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

### *B. International Residue Limits*

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

The Codex has not established a MRL for linuron.

### *C. Response to Comments*

EPA received one comment to the notice of filing from November 7, 2012 which opposed the use of linuron on any food. The commenter expressed a general opposition to the use of ''toxic chemicals'' on food and further noted that ''red blood cells are harmed in animals from this toxic chemical.'' The Agency understands the commenter's concerns and recognizes that some individuals believe that certain pesticide chemicals should not be permitted in our food. However, the existing legal framework provided by section 408 of the FFDCA states that tolerances may be set when the pesticide meets the safety standard imposed by that statute. The Agency is required by Section 408 of the FFDCA to estimate the risk of the potential exposure to these residues. EPA has concluded, based on data submitted in support of the petition and other reliable data, that there is a reasonable certainty that no harm will result from aggregate human exposure to linuron residues from these uses. The points of departure selected for risk assessment are protective of any effects on the hematopoietic system, including red blood cells. Additionally, testing requirements for pesticide tolerances have been specified by rulemaking after allowing for notice and comment by the public and peer review by appropriate scientific bodies. See 40 CFR part 158 for further information.

### *D. Revisions to Petitioned-for Tolerances*

Based on the data supporting the petition, EPA has revised the proposed tolerances for several commodities, as follows: Cilantro, dried leaves from 27 ppm to 10 ppm; dillweed, dried leaves from 7.1 ppm to 5.0 ppm; dill, seed from 0.3 ppm to 0.5 ppm; dill, oil from 4.8 ppm to 2.0 ppm; parsley, leaves from 3.0 ppm to 4.0 ppm; parsley, dried leaves from 8.3 ppm to 9.0 ppm; and pea, dry, seed from 0.08 ppm to 0.09 ppm. The Agency revised the cilantro, fresh leaves; dillweed, fresh leaves, and pea, dry seed tolerance levels based on analysis of the residue field trial data using the Organization for Economic Cooperation and Development (OECD) tolerance calculation procedures. Due to a limited number of field trials, EPA used the formula of 5X the mean in order to establish tolerance levels for coriander, seed; dill, seed; and parsley, leaves. Finally, for the dried herbs (cilantro, dillweed, and parsley) and dill oil, the formula of the highest average field trial (HAFT), multiplied by the concentration factor was used to calculate the recommended tolerance levels for these commodities. These concentration factors were derived from dividing the average dried or oil commodity residue by the average fresh commodity residue. Based on this calculation method, all four tolerance levels were decreased.

Finally, the Agency has revised the tolerance expression to clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of linuron not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring only residues of linuron convertible to 3,4-dichloroaniline.

## V. Conclusion

Therefore, tolerances are established for residues of linuron, 3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea), and its metabolites, in or on cilantro, fresh leaves at 3.0 ppm; cilantro, dried leaves at 10 ppm; coriander, seed at 0.01 ppm; dillweed, fresh leaves at 1.5 ppm; dillweed, dried

leaves at 5.0 ppm; dill, seed at 0.5 ppm; dill, oil at 2.0 ppm; horseradish at 0.05 ppm; parsley, leaves at 4.0 ppm; parsley, dried leaves at 9.0 ppm; and pea, dry, seed at 0.09 ppm. The regulation additionally removes the tolerance in or on parsley, leaves at 0.25 ppm from 40 CFR 180.184(c).

## VI. References

The following literature was referenced in the preamble of this document.


1. Gray, L; Wolf, C; Lambright, C; Mann, P; Price, M; Cooper, R; Ostby, J. 1999. Administration of potentially antiandrogenic pesticides (procymidone, linuron, iprodione, chlozolinate, p,p'-DDE, and ketoconazole) and toxic substances (dibutyl- and diethylhexyl phthalate, PCB 169, and ethane dimethane sulphonate) during sexual differentiation produces diverse profiles of reproductive malformations in the male rat. *Toxicol Ind Health,* 15 (1–2):94–118.
2. Hotchkiss, A; Parks-Saldutti, L; Ostby, J; Lambright, C; Furr, J; Vandenbergh, J; & Gray, L. 2004. A mixture of the ''antiandrogens'' linuron and butyl benzyl phthalate alters sexual differentiation of the male rats in a cumulative fashion. *Biol.of Reprod* 71:1852–1861.
3. Lambright, C; Ostby, J; Bobseine, K; Wilson, V; Hotchkiss, A; Mann, PC; Gray, L. 2000. Cellular and molecular mechanisms of action of linuron: an antiandrogenic herbicide that produces reproductive malformations in male rats. *Toxicol Sci.* 56(2):389–99.
4. McIntyre, B; Barlow, N; Wallace, D; Maness, S; Gaido, K; Foster, P. 2000. Effects of *in utero* exposure to linuron on androgen-dependent reproductive development in the male Crl:CD(SD)BR rat. *Toxicol Appl Pharmacol.* 167(2):87–9.
5. Vinggaard, A., Breinholt, V., and Larsen, J. 1999. Screening of selected pesticides for oestrogen receptor activation *in vitro.* Food Addit Contam. 16(12):533–542.


## VII. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

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

## VIII. Congressional Review Act

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

## List of Subjects in 40 CFR Part 180

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

Dated: January 24, 2014.

**Daniel J. Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

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

■ 2. In § 180.184:

■ a. Revise the introductory text in paragraph (a).

■ b. Add ''Cilantro, dried leaves'', Cilantro, fresh leaves'', ''Coriander, seed'', ''Dill, oil'', ''Dill, seed'', ''Dillweed, dried leaves'', Dillweed, fresh leaves'', Horseradish'', ''Parsley, dried leaves'', ''Parsley, leaves'', and ''Pea, dry, seed'' to the table in paragraph (a).

■ c. Revise the introductory text in paragraph (b).

■ d. Revise the introductory text in paragraph (c).

■ e. Remove ''Parsley, leaves'' from the table in paragraph (c).

The amendments read as follows:

### § 180.184 Linuron; tolerance for residues.

(a) *General.* Tolerances are established for residues of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea), including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only those linuron residues convertible to 3,4-dichloroaniline, calculated as the stoichiometric equivalent of linuron, in or on the commodity:

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Cilantro, dried leaves | 10 |
| Cilantro, fresh leaves | 3.0 |
| Coriander, seed | 0.01 |
| * * * * * | |
| Dill, oil | 2.0 |
| Dill, seed | 0.5 |
| Dillweed, dried leaves | 5.0 |
| Dillweed, fresh leaves | 1.5 |

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Horseradish | 0.05 |
| * * * * * | |
| Parsley, dried leaves | 9.0 |
| Parsley, leaves | 4.0 |
| * * * * * | |
| Pea, dry, seed | 0.09 |
| * * * * * | |

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the herbicide linuron [3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea], including its metabolites and degradates, in or on the commodities in the table below, resulting from use of the pesticide pursuant to FIFRA section 18 emergency exemptions. Compliance with the tolerance levels specified below is to be determined by measuring only those linuron residues convertible to 3.4-dichloroaniline, calculated as the stoichiometric equivalent of linuron, in or on the commodity. The tolerance expires and is revoked on the date specified in the table.

* * * * *

(c) *Tolerances with regional registrations.* Tolerances with regional registrations, as defined in § 180.1(l), are established for residues of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea), including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only those linuron residues convertible to 3,4-dichloroaniline, calculated as the stoichiometric equivalent of linuron, in or on the commodity.

* * * * *

[FR Doc. 2014–03077 Filed 2–11–14; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 25

**[IB Docket No. 12–267; FCC 13–111]**

### Comprehensive Review of Licensing and Operating Rules for Satellite Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission (FCC) has adopted many changes in its rules, which governs licensing and operation of space stations and earth stations. Collectively, the changes adopted in this document will streamline the Commission's regulations, fostering more rapid deployment of services to the public, greater investment, and new innovations in satellite services.

**DATES:** The rules in this document contain information collection requirements that have not been approved by Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing such OMB approval, the effective date of all of the rule amendments adopted in the Report and Order, and the approval date of the incorporation by reference of a certain publication listed in the rule.

**FOR FURTHER INFORMATION CONTACT:** William Bell (202) 418–0741, Satellite Division, International Bureau, Federal Communications Commission, Washington, DC 20554. For additional information concerning the information collection(s) contained in this document, contact Leslie Smith at 202–418–0217, or via the Internet at *Leslie.Smith@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order in IB Docket No. 12–267, FCC 13–111, adopted and released on August 9, 2013. The full text of the Report and Order is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or via email *FCC@BCPIWEB.com*. The full text may also be downloaded at *http://apps.fcc.gov/ecfs/document/view?id=7520937207 http://www.fcc.gov*. Alternative formats are available to person with disabilities by sending an email to *fcc504@fcc.gov* or calling the Consider & Governmental Affairs Bureau at 202–418–0530 (voice), or 202–418–0432 (tty).

### Synopsis

1. In September 2012, the Commission issued a Notice of Proposed Rulemaking (NPRM), 77 FR 67172, November 8, 2012 proposing extensive changes in part 25 of its rules, which governs licensing and operation of space stations and earth stations for the provision of satellite communication services. Sixteen parties filed comments in response to the NPRM and 10 parties filed reply comments. In this Report and Order, we adopt most of the changes proposed previously and discuss recommendations for further changes. In all, we revise over 150 rule provisions in part 25 to better reflect evolving technology; eliminate unnecessary information filing requirements for licensees and applicants; eliminate unnecessary technical restrictions; reorganize existing requirements; eliminate redundancy and unnecessary verbiage; clarify vague, confusing, or ambiguous provisions; resolve inconsistencies; and codify existing policies to improve transparency. These changes will better enable the Commission to assess the interference potential of proposed operations; afford more operational flexibility for satellite licensees; enable applicants and licensees to conserve time, effort, and expense in preparing applications and reports; ease administrative burdens for the Commission; and make the rules easier to understand.

### Paperwork Reduction Act

2. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.

3. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We received no comments on this issue. We have assessed the effects of the revisions adopted that might impose information collection burdens on small business concerns, and find that the impact on businesses with fewer than 25 employees will be an overall reduction in burden. The amendments adopted in this Report and Order eliminate unnecessary information filing requirements for licensees and applicants; eliminate unnecessary technical restrictions and enable applicants and licensees to conserve time, effort, and expense in preparing applications and reports. Overall, these changes may have a greater positive

impact on small business entities with more limited resources.

**Congressional Review Act**

4. The Commission will send copies of this Report and Order to Congress and the General Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), and will send a copy including the final regulatory flexibility act analysis to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. (1981).

**Effective Date**

5. While not all the revisions to part 25 adopted in this order require approval by OMB under the PRA, many do. These requirements cannot go into effect until OMB has approved the information collection requirements and the Commission has published a notice announcing the effective date of those requirements. To avoid confusion, all rule changes adopted in this Report and Order will become effective on the same date. The International Bureau will issue a public notice announcing the effective date for all of the rules adopted in this Report and Order.

**Final Regulatory Flexibility Analysis**

6. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in the Matter of Comprehensive Review of Licensing and Operating Rules for Satellite Services.[2] The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. No comments were received on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

**Need for, and Objectives of, the Proposed Rules**

7. This Order adopts comprehensive changes to part 25 of the Commission's rules, which governs licensing and operation of space stations and earth stations for the provision of satellite communication services.[4] We revise the rules to better reflect evolving technology; eliminate unnecessary information filing requirements for licensees and applicants; eliminate unnecessary technical restrictions; reorganize existing requirements; eliminate redundancy and unnecessary verbiage; clarify vague, confusing, or ambiguous provisions; resolve inconsistencies; and codify existing policies to improve transparency. These changes will better enable the Commission to assess the interference potential of proposed operations; afford more operational flexibility for satellite licensees; enable applicants and licensees to conserve time, effort, and expense in preparing applications and reports; ease administrative burdens for the Commission; and make the rules easier to understand. As a result, we anticipate that these rule changes will facilitate greater investment and further innovation in satellite services and more rapid deployment of new satellite services to the public.

8. This Order revises multiple sections of part 25 of the rules. Specifically, it revises the rules to:

- Update the information requirements for space and earth station applications to reflect evolving technology and eliminate information that is no longer needed.
- Consolidate annual reporting requirements and delete reporting requirements that are not necessary; reinforce reporting requirements for 24/7 contact points in cases of interference or emergency situations.
- Increase the number of earth station applications eligible for routine processing.
- Clarify the criteria for using Form 312EZ and related autogrant procedure for earth station applications.
- Eliminate certain restrictive elements of rules related to transponder saturation flux density settability requirements and cross-polarization isolation requirements.
- Harmonize rules concerning rain fade mitigation and eliminate certain mandated requirements.
- Clarify the requirements for routine processing of 12/14 GHz Very Small Aperture Terminals (VSAT) networks.
- Allow earth station applicants to certify antenna performance rather than requiring them to submit a certificate from the manufacturer.
- Adopt the industry standard for Automatic Transmitter Identification System (ATIS) signals for digital video uplinks for temporary-fixed earth stations.
- Relax telemetry, tracking, and command (TT&C) reporting requirements.
- Consolidate use restrictions and labeling requirements for MSS and ATC terminals aboard civil aircraft.
- Codify Commission practice of granting a single earth station license covering multiple antennas located close to each other.
- Update, improve, and consolidate definitions.

**Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

9. No party filing comments in this proceeding responded to the IRFA, and no party filing comments in this proceeding otherwise argued that the policies and rules proposed in this proceeding would have a significant economic impact on a substantial number of small entities. The Commission has, nonetheless, considered any potential significant economic impact that the rule changes may have on the small entities which are impacted. On balance, the Commission believes that the economic impact on small entities will be positive rather than negative, and that the rule changes move to streamline the part 25 requirements.

**Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

10. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration, and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

**Description and Estimate of the Number of Small Entities to Which the Rules May Apply**

11. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.[5] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[6] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[7] A small

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] *Comprehensive Review of Licensing and Operating Rules for Satellite Services,* IB Docket No. 12–267, Notice of Proposed Rulemaking, 27 FCC Rcd 11619 (2012) (*Notice*) at 11699 (Appendix B).

[3] *See* 5 U.S.C. 604.

[4] 47 CFR part 25, Satellite Communications.

[5] 5 U.S.C. 604(a)(3).

[6] 5 U.S.C. 601(6).

[7] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition

Continued

business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[8] Below, we describe and estimate the number of small entity licensees that may be affected by the adopted rules.

**Satellite Telecommunications and All Other Telecommunications**

12. The rules adopted in this Order will affect some providers of satellite telecommunications services, if adopted. Satellite telecommunications service providers include satellite and earth station operators. Since 2007, the SBA has recognized two census categories for satellite telecommunications firms: ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts.[9] Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.[10]

13. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' [11] For this category, Census Bureau data for 2007 show that there were a total of 512 satellite communications firms that operated for the entire year.[12] Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999.[13]

14. The second category of Other Telecommunications is comprised of entities ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' [14] For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.[15] Of this total, 2,346 firms had annual receipts of under $25 million.[16] We anticipate that some of these ''Other Telecommunications firms,'' which are small entities, are earth station applicants/licensees that might be affected if our proposed rule changes are adopted.

15. We anticipate that our proposed rule changes may have an impact on earth and space station applicants and licensees. Space station applicants and licensees, however, rarely qualify under the definition of a small entity. Generally, space stations cost hundreds of millions of dollars to construct, launch and operate. Consequently, we do not anticipate that any space station operators are small entities that will be affected by our proposed actions.

**Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

16. The rule changes adopted in this Order will affect reporting, recordkeeping and other compliance requirements for earth and space station operators. Most proposed changes, as described below, will decrease the regulatory burden for all businesses operators in the affected industries, especially firms that hold licenses to operate earth stations. Therefore, small entities in these industries will experience a decrease in regulatory burden of reporting, recordkeeping, and compliance as a result of most of the changes adopted in this Order.

17. First, the revisions simplify information collections in applications for earth station licensees, and increase the number of earth station applications eligible for routine processing. For example, we extend eligibility to use the simplified Form 312EZ and the autogrant procedure for routine applications for 20/30 GHz earth stations that will communicate via geostationary satellites previously coordinated with Federal-government systems pursuant to Footnote US334.[17] The revised rules further allow routine licensing of earth stations transmitting analog command signals of up to 1 megahertz in bandwidth. The revision also eliminates requirements to submit certain technical information in space station applications, to provide technical interference analysis, and to submit information to both the International Bureau and the Columbia Operations Center. These changes reduce the burden of compliance.

18. We codify Commission practice of granting a single earth station license covering multiple antennas located close to each other. Additionally, we revise the rules to allow earth station applicants to certify antenna performance, rather than having to submit a certificate from the manufacturer. We also clarify that routine blanket earth station licensing requirements apply to individual earth station applications. We clarify the requirements for routine processing of 12/14 GHz Very Small Aperture Terminals (VSAT) networks. Finally, we adopt the industry-developed standard for Automatic Transmitter Identification System (ATIS) signals for digital video uplinks, while allowing analog uplink operators a choice of methods for ATIS signals.

19. The revisions also streamline and reorganize the rules to facilitate improved compliance. For example, we replace the various band-specific use restrictions and labeling requirements for Mobile-Satellite Service transceivers or Ancillary Terrestrial Component (ATC) terminals aboard civil aircraft with a uniform aircraft-use restriction and associated warning-label requirement. We also combine definitions currently scattered throughout part 25 into a consolidated definitions section, we add definitions for previously undefined terms, and we clarify the text of many definitions and standardize their use. Throughout part 25, we improve the language and organization of the rules to ease compliance.

of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[8] Small Business Act, 15 U.S.C. 632 (1996).

[9] *See* 13 CFR 121.201, NAICS code 517410.

[10] *See* 13 CFR 121.201, NAICS code 517919.

[11] U.S. Census Bureau, 2007 NAICS Definitions, ''517410 Satellite Telecommunications.''

[12] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.*

[13] *Id.*

[14] U.S. Census Bureau, 2007 NAICS Definitions, ''517919 Other Telecommunications,'' *http://www.census.gov/naics/2007/def/ND517919.HTM.*

[15] *See* 13 CFR 121.201, NAICS code 517919.

[16] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, ''Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517919'' (issued Nov. 2010).

[17] 47 CFR 2.106, Footnote US334 requires coordination between Federal space and terrestrial systems and non-Federal space and terrestrial systems operating in certain frequency bands.

20. Together, these changes reduce the reporting and recordkeeping burden, and make the rules easier to understand and follow. These changes will decrease compliance costs for all businesses in the affected industries, including the small entities regulated under part 25.

**Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

21. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' [18]

22. The Commission is aware that some of the revisions may impact small entities. The *NPRM* sought comment from all interested parties, and small entities were encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the *NPRM.* No commenters raised any specific concerns about the impact of the revisions on small entities. This order adopts rule revisions to modernize the rules and advance the satellite industry. The revisions eliminate unnecessary technical and information filing requirements, and reorganize and simplify existing requirements to make them easier to understand and follow. All of these revisions lessen the burden of compliance on small entities with more limited resources than larger entities.

23. The changes for earth station licensing will create more opportunities for routine licensing and allow for more liberal blanket licensing of earth stations. Each of these changes will lessen the burden in the licensing process. Earth station operators may experience an additional burden from reinforced reporting requirements for 24/7 contact points for interference or emergency situations, a burden that was always required, but is more clearly articulated. However, the revisions also allow this requirement to replace a requirement for more specific TT&C information, so some of that additional burden is offset. Earth station operators may also experience increased burden from revisions to rules concerning ATIS requirements. Specifically, the transition to the newly adopted ATIS standard could impose burdens. However, the uniform ATIS format will also reduce the costs, by modernizing the standard governing ATIS signals, making it appropriate for more spectrum-efficient digital transmissions, and by standardizing ATIS signals and reducing the burden imposed by having to cope with multiple formats. Thus, the proposed revisions will ultimately lead to benefits for small earth station operators in the long-term.

24. *Report to Congress:* The Commission will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[19] In addition, the Commission will send a copy of this Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.[20]

**Ordering Clauses**

25. *It is ordered,* pursuant to Sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 161, 303(c), 303(f), 303(g), and 303(r), that this Report and Order *is adopted,* the policies, rules and requirements discussed herein *are adopted,* and part 25 of the Commission's rules *is amended* as set forth in Appendix B.

26. *It is further ordered* that all policies, rules, rule parts and requirements adopted or amended herein, including all rules that contain new information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, *shall be effective* upon the same date, which will be designated in a document published in the **Federal Register**. That Public Notice will not be published until the Office of Management and Budget (OMB) has approved those rule revisions adopted in this Report and Order that impose new or changed information collection requirements, and such approval will be noted in that Public Notice.

27. *It is further ordered* that the International Bureau is delegated authority to issue documents consistent with this Report and Order.

28. *It is further ordered* that the International Bureau will issue a document announcing the effective date for all of the changes adopted in this Report and Order.

29. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 25**

Automatic transmitter identification, Communications common carriers, Definitions, Earth stations, Incorporation by reference, Reporting, Space stations.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

## PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 is revised to read as follows:

**Authority:** Interprets or applies sections 4, 301, 302, 303, 307, 309, 319, 332, 705, and 721 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309, 319, 332, 605, and 721, unless otherwise noted.

■ 2. Revise § 25.103 to read as follows:

**§ 25.103 Definitions.**

Terms with definitions including the ''(RR)'' designation are defined in the same way in § 2.1 of this chapter and in the Radio Regulations of the International Telecommunication Union.

*1.5/1.6 GHz Mobile-Satellite Service.* Mobile-Satellite Service provided in any portion of the 1525–1559 MHz space-to-Earth band and the 1626.5–1660.5 MHz Earth-to-space band, which are referred to in this rule part as the ''1.5/1.6 GHz MSS bands.''

*1.6/2.4 GHz Mobile-Satellite Service.* A Mobile-Satellite Service that operates in the 1610–1626.5 MHz and 2483.5–2500 MHz bands, or in any portion thereof.

*2 GHz Mobile-Satellite Service.* A Mobile-Satellite Service that operates in the 2000–2020 MHz and 2180–2200 MHz bands, or in any portion thereof.

*12/14 GHz bands.* The 11.7–12.2 GHz Fixed-Satellite Service space-to-Earth band and the 14.0–14.5 GHz Fixed-Satellite Service Earth-to-space band.

*17/24 GHz Broadcasting-Satellite Service (17/24 GHz BSS).* A

[18] 5 U.S.C. 603(c)(1)–(c)(4).

[19] *See* 5 U.S.C. 801(a)(1)(A).

[20] *See* 5 U.S.C. 604(b).

radiocommunication service involving transmission from one or more feeder-link earth stations to other earth stations via geostationary satellites, in the 17.3–17.7 GHz (space-to-Earth) (domestic allocation), 17.3–17.8 GHz (space-to-Earth) (international allocation) and 24.75–25.25 GHz (Earth-to-space) bands. For purposes of the application processing provisions of this part, the 17/24 GHz BSS is a GSO-like service. Unless specifically stated otherwise, 17/24 GHz BSS systems are subject to the rules in this part applicable to FSS.

*20/30 GHz bands.* The 18.3–20.2 GHz Fixed-Satellite Service space-to-Earth band and the 28.35–30.0 GHz Fixed-Satellite Service Earth-to-space band.

*Ancillary Terrestrial Component (ATC).* A terrestrial communications network used in conjunction with a qualifying satellite network system authorized pursuant to these rules and the conditions established in the Orders issued in IB Docket No. 01–185, *Flexibility for Delivery of Communications by Mobile-Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band.*

*Ancillary Terrestrial Component (ATC) base station.* A terrestrial fixed facility used to transmit communications to or receive communications from one or more ancillary terrestrial component mobile terminals.

*Ancillary Terrestrial Component (ATC) mobile terminal.* A terrestrial mobile facility used to transmit communications to or receive communications from an ancillary terrestrial component base station or a space station.

*Blanket license.* A license for multiple fixed or mobile earth stations or SDARS terrestrial repeaters that may be operated anywhere within a geographic area specified in the license, or for multiple non-geostationary-orbit space stations.

*C band.* As used in this part, the terms ''C band'' and ''conventional C band'' refer to the 3700–4200 MHz (space-to-Earth) and 5925–6425 MHz (Earth-to-space) bands. These paired bands are allocated to the Fixed-Satellite Service and are also referred to as the 4/6 GHz bands.

*Coordination distance.* When determining the need for coordination, the distance on a given azimuth from an earth station sharing the same frequency band with terrestrial stations, or from a transmitting earth station sharing the same bidirectionally allocated frequency band with receiving earth stations, beyond which the level of permissible interference will not be exceeded and coordination is therefore not required. (RR)

*Direct Broadcast Satellite (DBS) Service.* A radiocommunication service in which signals transmitted or retransmitted by Broadcasting-Satellite Service space stations in the 12.2–12.7 GHz band are intended for direct reception by subscribers or the general public. For the purposes of this definition, the term direct reception includes individual reception and community reception.

*Earth station.* A station located either on the Earth's surface or within the major portion of the Earth's atmosphere intended for communication:

(1) With one or more space stations; or

(2) With one or more stations of the same kind by means of one or more reflecting satellites or other objects in space. (RR)

*Earth Station on Vessel (ESV).* An earth station onboard a craft designed for traveling on water, receiving from and transmitting to geostationary-orbit Fixed-Satellite Service space stations.

*Earth Stations Aboard Aircraft (ESAA).* Earth stations operating aboard aircraft that receive from and transmit to geostationary-orbit Fixed-Satellite Service space stations and operate within the United States pursuant to the requirements in § 25.227.

*Emergency Call Center.* A facility that subscribers of satellite commercial mobile radio services call when in need of emergency assistance by dialing ''911'' on their mobile earth station terminals.

*Equivalent diameter.* When circular aperture reflector antennas are employed, the size of the antenna is generally expressed as the diameter of the antenna's main reflector. When non-reflector or non-circular-aperture antennas are employed, the equivalent diameter is the diameter of a hypothetical circular-aperture antenna with the same aperture area as the actual antenna. For example, an elliptical aperture antenna with major axis $a$ and minor axis $b$ will have an equivalent diameter of $[a \times b]^{1/2}$. A rectangular aperture antenna with length $l$ and width $w$ will have an equivalent diameter of $[4(l \times w)/\pi]^{1/2}$.

*Equivalent Power Flux Density (EPFD).* The sum of the power flux densities produced at a geostationary-orbit receive earth or space station on the Earth's surface or in the geostationary orbit, as appropriate, by all the transmit stations within a non-geostationary-orbit Fixed-Satellite Service system, taking into account the off-axis discrimination of a reference receiving antenna assumed to be pointing in its nominal direction. The equivalent power flux density, in dB(W/m²) in the reference bandwidth, is calculated using the following formula:

$$10\log_{10}\left[\sum_{n=1}^{N_a} 10^{\frac{P_i}{10}} \frac{G_t(\theta_i)}{4\pi d_i^2} \cdot \frac{G_r(\phi_i)}{G_{r,max}}\right]$$

Where:

$N_a$ is the number of transmit stations in the non-geostationary orbit system that are visible from the GSO receive station considered on the Earth's surface or in the geostationary orbit, as appropriate;

$i$ is the index of the transmit station considered in the non-geostationary orbit system;

$P_i$ is the RF power at the input of the antenna of the transmit station, considered in the non-geostationary orbit system in dBW in the reference bandwidth;

$\theta_i$ is the off-axis angle between the boresight of the transmit station considered in the non-geostationary orbit system and the direction of the GSO receive station;

$G_t(\theta_i)$ is the transmit antenna gain (as a ratio) of the station considered in the non-geostationary orbit system in the direction of the GSO receive station;

$d_i$ is the distance in meters between the transmit station considered in the non-geostationary orbit system and the GSO receive station;

$\varphi_i$ is the off-axis angle between the boresight of the antenna of the GSO receive station and the direction of the $i$th transmit station considered in the non-geostationary orbit system;

$G_r(\theta_i)$ is the receive antenna gain (as a ratio) of the GSO receive station in the direction of the $i$th transmit station considered in the non-geostationary orbit system;

$G_{r,\max}$ is the maximum gain (as a ratio) of the antenna of the GSO receive station.

*Extended Ku band.* As used in this part, the term ''extended Ku band'' refers to the 10.7–11.7 GHz (space-to-Earth), 12.75–13.25 GHz (Earth-to-space), and 13.75–14.0 GHz (Earth-to-space) Fixed-Satellite Service bands.

*Feeder link.* A radio link from a fixed earth station at a given location to a space station, or vice versa, conveying information for a space radiocommunication service other than the Fixed-Satellite Service. The given location may be at a specified fixed point or at any fixed point within specified areas. (RR)

*Fixed earth station.* An earth station intended to be used at a fixed position. The position may be a specified fixed point or any fixed point within a specified area.

*Fixed-Satellite Service (FSS).* A radiocommunication service between earth stations at given positions, when one or more satellites are used; the given position may be a specified fixed point or any fixed point within

specified areas; in some cases this service includes satellite-to-satellite links, which may also be operated in the inter-satellite service; the Fixed-Satellite Service may also include feeder links of other space radiocommunication services. (RR)

*Geostationary-orbit (GSO) satellite.* A geosynchronous satellite whose circular and direct orbit lies in the plane of the Earth's equator and which thus remains fixed relative to the Earth; by extension, a geosynchronous satellite which remains approximately fixed relative to the Earth.

*Inter-Satellite Service.* A radiocommunication service providing links between artificial earth satellites.

*Ku band.* In this rule part, the terms ''Ku band'' and ''conventional Ku band'' refer to the 11.7–12.2 GHz (space-to-Earth) and 14.0–14.5 GHz (Earth-to-space) bands. These paired bands are allocated to the Fixed-Satellite Service and are also referred to as the 12/14 GHz bands.

*Land earth station.* An earth station in the Fixed-Satellite Service or, in some cases, in the Mobile-Satellite Service, located at a specified fixed point or within a specified area on land to provide a feeder link for the Mobile-Satellite Service. (RR)

*Land Mobile Earth Station.* A mobile earth station in the land mobile-satellite service capable of surface movement within the geographical limits of a country or continent. (RR)

*Mobile Earth Station.* An earth station in the Mobile-Satellite Service intended to be used while in motion or during halts at unspecified points. (RR)

*Mobile-Satellite Service (MSS).* (1) A radiocommunication service:

(i) Between mobile earth stations and one or more space stations, or between space stations used by this service; or

(ii) Between mobile earth stations, by means of one or more space stations.

(2) This service may also include feeder links necessary for its operation. (RR)

*NGSO.* Non-geostationary orbit.

*NGSO FSS gateway earth station.* An earth station complex consisting of multiple interconnecting earth station antennas supporting the communication routing and switching functions of a non-geostationary-orbit Fixed-Satellite Service system. A gateway earth station in the NGSO FSS:

(1) Does not originate or terminate radiocommunication traffic, but interconnects multiple non-collocated user earth stations operating in frequency bands other than designated gateway bands, through a satellite with other primary terrestrial networks, such as the public switched telephone network and/or Internet networks.

(2) Is not for the exclusive use of any customer.

(3) May also be used for telemetry, tracking, and command transmissions for the NGSO FSS system.

(4) May include multiple antennas, each required to meet the antenna performance standard in § 25.209(h), located within an area of one second latitude by one second longitude. Additional antennas located outside such area will be considered as a separate gateway earth station complex for purposes of coordination with terrestrial services.

*Non-Voice, Non-Geostationary (NVNG) Mobile-Satellite Service.* A Mobile-Satellite Service reserved for use by non-geostationary satellites in the provision of non-voice communications which may include satellite links between land earth stations at fixed locations.

*Permitted Space Station List.* A list of all U.S.-licensed geostationary-orbit space stations providing Fixed-Satellite Service in the conventional C band, the conventional Ku band, or the 18.3–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz, and 29.25–30.0 GHz bands, as well as non-U.S.-licensed geostationary-orbit space stations approved for U.S. market access to provide Fixed-Satellite Service in the conventional C band, conventional Ku band, or 18.3–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz, and 29.25–30.0 GHz bands.

*Power flux density (PFD).* The amount of power flow through a unit area within a unit bandwidth. The units of power flux density are those of power spectral density per unit area, namely watts per hertz per square meter. These units are generally expressed in decibel form as dB(W/Hz/m$^2$), dB(W/m$^2$) in a 4 kHz band, or dB(W/m$^2$) in a 1 MHz band.

*Power Spectral Density (PSD).* The amount of an emission's transmitted carrier power applied at the antenna input falling within the stated bandwidth. The units of power spectral density are watts per hertz and are generally expressed in decibel form as dB(W/Hz) when measured in a 1 Hz bandwidth, dB(W/4kHz) when measured in a 4 kHz bandwidth, or dB(W/MHz) when measured in a 1 MHz bandwidth.

*Protection areas.* The geographic regions on the surface of the Earth where U.S. Department of Defense (DoD) meteorological satellite systems or National Oceanic and Atmospheric Administration (NOAA) meteorological satellite systems, or both such systems, are receiving signals from low earth orbiting satellites. Also, areas around 20/30 GHz NGSO MSS feeder-link earth stations in the 1.6/2.4 GHz Mobile-Satellite Service determined in the manner specified in § 25.203(j).

*Radiodetermination-Satellite Service.* A radiocommunication service for the purpose of radiodetermination involving the use of one of more space stations. This service may also include feeder links necessary for its own operation. (RR)

*Routine processing or licensing.* Expedited processing of unopposed applications for Fixed-Satellite Service earth stations communicating via geostationary-orbit satellites that satisfy the criteria in § 25.134(a), § 25.134 (g), § 25.138(a), § 25.211(d), § 25.212(c), § 25.212(d), § 25.212(f), § 25.218, or § 25.223(b), include all required information, are consistent with all Commission rules, and do not raise any policy issues. Some, but not all, routine earth station applications are eligible for an autogrant procedure under § 25.115(a)(4).

*Satellite Digital Audio Radio Service (SDARS).* A radiocommunication service in which audio programming is digitally transmitted by one or more space stations directly to fixed, mobile, and/or portable stations, and which may involve complementary repeating terrestrial transmitters and telemetry, tracking and command facilities.

*Satellite system.* A space system using one or more artificial earth satellites. (RR)

*Selected assignment.* A spectrum assignment voluntarily identified by a 2 GHz MSS licensee at the time that the licensee's first 2 GHz Mobile-Satellite Service satellite reaches its intended orbit.

*Shapeable antenna beam.* A satellite transmit or receive antenna beam, the gain pattern of which can be modified at any time without physically repositioning a satellite antenna reflector.

*Spacecraft.* A man-made vehicle which is intended to go beyond the major portion of the Earth's atmosphere. (RR)

*Space radiocommunication.* Any radiocommunication involving the use of one or more space stations or the use of one or more reflecting satellites or other objects in space.

*Space station.* A station located on an object which is beyond, is intended to go beyond, or has been beyond, the major portion of the Earth's atmosphere. (RR)

*Space system.* Any group of cooperating earth stations and/or space stations employing space

radiocommunication for specific purposes. (RR)

*Terrestrial radiocommunication.* Any radiocommunication other than space radiocommunication or radio astronomy. (RR)

*Terrestrial station.* A station effecting terrestrial radiocommunication.

*Vehicle-Mounted Earth Station (VMES).* An earth station, operating from a motorized vehicle that travels primarily on land, that receives from and transmits to geostationary orbit Fixed-Satellite Service space stations and operates within the United States pursuant to the requirements set out in § 25.226.

■ 3. In § 25.111, revise the section heading and paragraph (b) and add paragraph (d) to read as follows:

**§ 25.111 Additional information and ITU cost recovery.**

* * * * *

(b) Applicants and licensees of radio stations governed by this part must provide the Commission with the information required for Advance Publication, Coordination, and Notification of frequency assignment filings, including due diligence information, pursuant to the Radio Regulations of the International Telecommunication Union. No protection from interference caused by radio stations authorized by other Administrations is guaranteed unless ITU procedures are timely completed or, with respect to individual Administrations, coordination agreements are successfully completed. A license for which such procedures have not been completed may be subject to additional terms and conditions required for coordination of the frequency assignments with other Administrations.

* * * * *

(d) The Commission will submit the information required by paragraphs (b) or (c) of this section to the ITU only after the applicant or licensee has submitted a signed declaration that it unconditionally accepts all consequent ITU cost-recovery responsibility. The declaration must be electronically filed in the ''Other Filings'' tab of the application file in the IBFS database, and a paper copy must be mailed to the International Bureau, Satellite Division. The filing must reference the call sign and name of the international satellite system and include the name(s), address(es), email address(es), and telephone and fax number(s) of a contact person, or persons, responsible for cost recovery inquiries and ITU correspondence and filings. Supplements must be filed as necessary to apprise the Commission of changes in the contact information until the ITU cost-recovery responsibility is discharged. The applicant or licensee must remit payment of any resultant cost-recovery fee to the ITU by the due date specified in the ITU invoice, unless an appeal is pending with the ITU that was filed prior to the due date. A license granted in reliance on such a commitment will be conditioned upon discharge of any such cost-recovery obligation.

Where an applicant or licensee has an overdue ITU cost-recovery fee and does not have an appeal pending with the ITU, the Commission will dismiss any application associated with that satellite network.

■ 4. In § 25.112, add paragraph (a)(4), to read as follows:

**§ 25.112 Defective applications.**

(a) * * *

(4) The application is identical to a pending application that was timely filed pursuant to § 25.157 or § 25.158.

* * * * *

■ 5. In § 25.113, revise the section heading and paragraph (a), add paragraph (b), remove and reserve paragraphs (c), (d), and (e), and revise paragraphs (f) and (h) to read as follows:

**§ 25.113 Station construction, launch authority, and operation of spare satellites.**

(a) Construction permits are not required for earth stations. Construction of such stations may commence prior to grant of an earth station license at the applicant's own risk, subject to the requirements of § 1.1312 and part 17 of this chapter concerning environmental processing and construction, marking, and lighting of antenna structures.

(b) Construction permits are not required for Ancillary Terrestrial Component (ATC) stations. A party with licenses issued under this part for launch and operation of 1.5/1.6 GHz, 1.6/2.4 GHz, or 2 GHz Mobile-Satellite Service space stations and operation of associated ATC facilities may commence construction of ATC base stations at its own risk after commencing physical construction of the space stations, subject to the requirements of § 1.1312 and part 17 of this chapter. Such an MSS/ATC licensee may also conduct equipment tests for the purpose of making adjustments and measurements necessary to ensure compliance with the terms of its ATC license, applicable rules in this part, and technical design requirements. Prior to commencing such construction and pre-operational testing, an MSS/ATC licensee must notify the Commission of the commencement of physical satellite construction and the licensee's intention to construct and test ATC facilities. This notification must be filed electronically in the appropriate file in the International Bureau Filing System database. The notification must specify the frequencies the licensee proposes to use for pre-operational testing and the name, address, and telephone number of a representative for the reporting and mitigation of any interference resulting from such testing. MSS/ATC licensees engaging in pre-operational testing must comply with §§ 5.83, 5.85(c), 5.111, and 5.117 of this chapter regarding experimental operations. An MSS/ATC licensee may not offer ATC service to the public for compensation during pre-operational testing.

* * * * *

(f) Construction permits are not required for U.S.-licensed space stations, except for stations that the applicant proposes to operate to disseminate program content to be received by the public at large, rather than only by subscribers. Construction of a station for which a construction permit is not required may commence, at the applicant's own risk, prior to grant of a license. Before commencing pre-grant construction, however, an applicant must notify the Commission in writing that it plans to begin construction at its own risk.

* * * * *

(h) Operators of NGSO satellite systems licensed by the Commission need not file separate applications to operate technically identical in-orbit spares launched pursuant to a blanket license granted under § 25.114(a). However, the licensee must notify the Commission within 30 days of bringing the in-orbit spare into operation and certify that its activation has not increased the number of operating space stations above the number previously authorized and that the licensee has determined by measurement that the activated spare is operating within the terms of the license.

**§ 25.114 [Amended]**

■ 6. Amend § 25.114 as follows:

■ a. Revise paragraph (a);

■ b. Revise paragraphs (c)(4) through (c)(8), (c)(10), (c)(11), and (c)(13);

■ c. Remove and reserve paragraphs (c)(9) and (c)(12);

■ d Revise paragraph (d)(1);

■ e. Remove and reserve paragraphs (d)(2) through (d)(5);

■ f. Revise paragraphs (d)(7) and (d)(10) through (d)(13);

■ g. Add a new sentence at the end of paragraph (d)(14)(iv);

■ h. Add paragraph (d)(14)(v); and

■ i. Remove paragraph (e).

**§ 25.114 Applications for space station authorizations.**

(a) A comprehensive proposal must be submitted for each proposed GSO space station or NGSO satellite constellation on FCC Form 312, Main Form and Schedule S, together with attached exhibits as described in paragraph (d) of this section. An application for blanket authority for an NGSO satellite constellation comprised of space stations that are not all technically identical must provide the information required by paragraphs (c) and (d) of this section for each type of space station in the constellation.

* * * * *

(c) * * *

(4)(i) For each space station transmitting and receiving antenna beam (including telemetry and tracking beams but not command beams), specify channel center frequencies and bandwidths and polarization plan. For command beams, specify each of the center frequencies within a 5 MHz range or a range of 2 percent of the assigned bandwidth, whichever is smaller, and the polarization plan. If the space station can vary channel bandwidth in a particular frequency band with on-board processing, specify only the range of frequencies in that band over which the beam can operate and the polarization plan.

(ii) Specify maximum EIRP and maximum EIRP density for each space station transmitting antenna beam. If the satellite uses shapeable antenna beams, as defined in § 25.103, specify instead maximum possible EIRP and maximum possible EIRP density within each shapeable beam's proposed coverage area. Provide this information for each frequency band in which the transmitting antenna would operate. For bands below 15 GHz, specify EIRP density in dBW/4 kHz; for bands at and above 15 GHz, specify EIRP density in dBW/MHz. If the EIRP density varies over time, specify the maximum possible EIRP density.

(iii)–(iv) [Reserved]

(v) For each space station receiving beam other than command beams, specify the gain-to-temperature ratio at beam peak. For receiving beams fed into transponders, also specify the minimum and maximum saturation flux density at beam peak. If the satellite uses shapeable beams, specify the minimum and maximum gain-to-temperature ratio within each shapeable beam's proposed coverage area, and for shapeable receiving beams fed into transponders, specify the minimum and maximum saturation power flux density within the 0 dB relative antenna gain isoline. Provide this information for each frequency band in which the receiving beam can operate. For command beams, specify the beam peak flux density at the command threshold;

(vi)(A) For space stations in geostationary orbit, specify predicted space station antenna gain contour(s) for each transmit and receive antenna beam, except for beams where the contour at 8 dB below peak falls entirely beyond the edge of the visible Earth. These contour(s) should be plotted on an area map at 2 dB intervals down to 10 dB below the peak gain and at 5 dB intervals between 10 dB and 20 dB below the peak gain. Applicants must present this information in a GIMS-readable format.

(B) For space stations in non-geostationary orbits, specify for each unique orbital plane the predicted antenna gain contour(s) for each transmit and receive antenna beam for one space station if all space stations are identical in the constellation. If individual space stations in the constellation have different antenna beam configurations, specify the predicted antenna gain contours for each transmit and receive beam for each space station type and orbit or orbital plane requested. The contours should be plotted on an area map with the beam depicted on the surface of the earth with the space stations' peak antenna gain pointed at nadir to a latitude and longitude within the proposed service area. The contour(s) should be plotted at 2 dB intervals down to 10 dB below the peak gain and at 5 dB intervals between 10 dB and 20 dB below the peak gain. For intersatellite links, specify the peak antenna gain and 3 dB beamwidth.

(C) For space stations with shapeable antenna beams, specify the contours, as defined in paragraph (c)(4)(vi)(A) or (B) of this section, for the transmitting beam configuration that results in the highest EIRP density for the beams listed in paragraph (c)(4)(ii) of this section and for the receiving beam configuration with the smallest gain-to-temperature ratio and the highest required saturation power flux density for the beams listed in paragraph (c)(4)(v) of this section. If the shapeable beams are also steerable, include the contours that would result from moving the beam peak around the limit of the effective beam peak area and the 0 dB relative antenna gain isoline. The proposed maximum coverage area must be clearly specified.

(D) For space stations with steerable beams that are not shapeable, specify the applicable contours, as defined in paragraph(c)(4)(vi)(A) or (B) of this section, with a description of the area that the steerable beam(s) is expected to serve, or provide the contour information described in paragraph (c)(4)(vi)(C) of this section.

(vii) For geostationary satellites with large numbers of identical fixed spot beams, other than DBS satellites, applicants may, as an alternative to submitting the information described in paragraph (c)(4)(vi) of this section with respect to these beams, provide the predicted antenna gain contours for one transmit and receive antenna beam, together with one of the following:

(A) An area map showing all of the spot beams depicted on the surface of the Earth;

(B) A table identifying the maximum antenna gain point(s) in latitude and longitude to the nearest 0.1 degree; or

(C) A map of the isolines formed by combining all of the spot beams into one or more composite beams. For non-geostationary satellites with large numbers of identical fixed beams on each satellite, applicants may, as an alternative to submitting the information described in paragraph (c)(4)(vi) of this section with respect to those beams, specify the predicted antenna gain contours for one transmit and receive beam pointed to nadir, together with an area map showing all of the spot beams depicted on the surface of the earth with the satellites' peak antenna gain pointed to a selected latitude and longitude within the service area.

(5) For space stations in geostationary orbit:

(i) Orbital location requested,

(ii) [Reserved]

(iii) East-west station-keeping range,

(iv) North-south station-keeping range, and

(v) Accuracy to which antenna axis attitude will be maintained;

(6) For space stations in non-geostationary orbits:

(i) The number of orbital planes and the number of space stations in each plane,

(ii) The inclination of the orbital plane(s),

(iii) The orbital period,

(iv) The apogee,

(v) The perigee,

(vi) The argument(s) of perigee,

(vii) Active service arc(s),

(viii) Right ascension of the ascending node(s), and

(ix) For each satellite in each orbital plane, the initial phase angle at the reference time;

(7) The frequency bands, types of service, and coverage areas;

(8) Calculated maximum power flux density levels within each coverage area and energy dispersal bandwidths, if any,

needed for compliance with § 25.208, for the angles of arrival specified in the applicable paragraph(s) of § 25.208;

* * * * *

(10) Estimated operational lifetime;

(11) Whether the space station is to be operated on a common carrier basis;

* * * * *

(13) The polarization information necessary for determining compliance with §§ 25.210(a)(1), (a)(3), and (i);

(d) * * *

(1) Overall description of system facilities, operations and services and explanation of how uplink frequency bands would be connected to downlink frequency bands;

* * * * *

(7) Applicants for authorizations for space stations in the Fixed-Satellite Service must also include the information specified in § 25.140(a). Applicants for authorizations for space stations in the 17/24 GHz Broadcasting-Satellite Service must also include the information specified in § 25.140(b)(3), (b)(4), (b)(5), or (b)(6);

* * * * *

(10) Applications for space station authorizations in the 1.6/2.4 GHz Mobile-Satellite Service must also provide all information required by § 25.143(b);

(11) Applications for space stations in the Direct Broadcast Satellite Service must include a clear and detailed statement of whether the space station is to be operated on a broadcast or non-broadcast basis;

(12) Applications for authorizations in the non-geostationary orbit Fixed-Satellite Service in the 10.7–14.5 GHz bands must also provide all information specified in § 25.146.

(13) For satellite applications in the Direct Broadcast Satellite Service, if the proposed system's technical characteristics differ from those specified in the Appendix 30 BSS Plans, the Appendix 30A feeder link Plans, Annex 5 to Appendix 30 or Annex 3 to Appendix 30A of the ITU Radio Regulations, each applicant must provide:

(i) The information requested in Appendix 4 of the ITU Radio Regulations. Further, applicants must provide sufficient technical showing that the proposed system could operate satisfactorily if all assignments in the BSS and feeder link Plans were implemented.

(ii) Analyses of the proposed system with respect to the limits in Annex 1 to Appendices 30 and 30A of the ITU Radio Regulations.

(14) * * *

(iv) * * * Applicants for space stations to be used only for commercial remote sensing may, in lieu of submitting detailed post-mission disposal plans to the Commission, certify that they have submitted such plans to the National Oceanic and Atmospheric Administration for review.

(v) For non-U.S.-licensed space stations, the requirement to describe the design and operational strategies to minimize orbital debris risk can be satisfied by demonstrating that debris mitigation plans for the space station(s) for which U.S. market access is requested are subject to direct and effective regulatory oversight by the national licensing authority.

* * * * *

■ 7. In § 25.115, revise paragraphs (a)(2), (a)(3), and (d), and add paragraphs (j) and (k) to read as follows:

**§ 25.115 Applications for earth station authorizations.**

(a) * * *

(2) Applicants for licenses for transmitting earth stations in the Fixed-Satellite Service may file on FCC Form 312EZ if all of the following criteria are met:

(i) The application is for a single station that will transmit to an FSS GSO space station, or stations, in the 5925–6425 MHz band, or for single or multiple stations that will transmit to an FSS GSO space station, or stations, in the 14.0–14.5 GHz, 28.35–28.6 GHz, and/or 29.5–30.0 GHz band;

(ii) The earth station(s) will not be installed or operated on ships, aircraft, or other moving vehicles;

(iii) The equivalent diameter of the proposed antenna is 4.5 meters or greater if the station will transmit in the 5925–6425 MHz band or 1.2 meters or greater if the station will transmit in the 14.0–14.5 GHz band;

(iv) If the station(s) will transmit in the 5925–6425 MHz band or the 14.0–14.5 GHz band, the performance of the proposed antenna comports with the standards in § 25.209(a) and (b) and is verified in accordance with applicable provisions of § 25.132;

(v) If the station(s) will transmit in the 5925–6425 MHz band or the 14.0–14.5 GHz band, input power to the antenna will not exceed applicable limits specified in §§ 25.211 and 25.212; if the station(s) will transmit in the 28.35–28.6 GHz and/or 29.5–30.0 GHz band, off-axis EIRP density will not exceed the levels specified in § 25.138(a);

(vi) Operation of the proposed station has been successfully coordinated with terrestrial systems, if the station would transmit in the 5925–6425 MHz band;

(vii) The applicant has provided an environmental impact statement pursuant to § 1.1311 of this chapter, if required; and

(viii) The applicant does not propose to communicate via non-U.S.-licensed satellites not on the Permitted Space Station List.

(ix) If the proposed station(s) will transmit in the 28.35–28.6 GHz and/or 29.5–30 GHz bands, the applicant is proposing to communicate only via satellites for which coordination has been completed pursuant to Footnote US334 of the U.S. Table of Frequency Allocations with respect to Federal Government systems authorized on a primary basis, under an agreement previously approved by the Commission and the National Telecommunications and Information Administration, and the applicant certifies that it will operate consistently with the agreement.

(3) Unless the Commission orders otherwise, an application filed on FCC Form 312EZ in accordance with paragraph (a)(2) of this section will be deemed granted 35 days after the date of the public notice that the application has been accepted for filing, provided no objection is filed during the 30-day public notice period.

* * * * *

(d) Mobile-Satellite Service user transceivers need not be individually licensed. Service vendors may file blanket applications for such transceivers using FCC Form 312, Main Form and Schedule B, specifying the number of units to be covered by the blanket license. A blanket license application for 1.5/1.6 GHz MSS user transceivers must include an explanation of how the applicant will comply with the priority and preemptive access requirements in § 25.287. (e) *Earth stations operating in the Fixed-Satellite Service in the 20/30 GHz band*: License applications for Fixed-Satellite Service earth stations that would communicate via geostationary satellites in the 18.3–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz, and/or 29.25–30.0 GHz band must include the information required by § 25.138. Such earth stations may be licensed on a blanket basis. An application for a blanket license for such earth stations must specify the number of terminals to be covered by the license.

* * * * *

(j) An application for a new fixed earth station or modification involving alteration of the overall height of one or more existing earth station antenna structures must include the FCC Antenna Structure Registration Number(s) for the antenna structure(s), if assigned. If no such number has been

assigned, the application must state whether prior FAA notification is required by part 17 of this chapter and, if so, whether the applicant or owner of the structure has notified the FAA of the proposed construction or alteration and applied for an Antenna Structure Registration Number in accordance with part 17 of this chapter. Applicants who maintain that prior FAA notification is not required for construction or alteration of a structure with overall height more than 6.1 meters above ground level must explain in the application why such prior notification is not required.

(k)(1) Applicants for Fixed-Satellite Service earth stations that qualify for routine processing in the C, Ku, or 20/30 GHz band, including ESV applications filed pursuant to § 25.222(a)(1) or (a)(3), VMES applications filed pursuant to § 25.226(a)(1) or (a)(3), and ESAA applications filed pursuant to § 25.227(a)(1) or (a)(3), may designate the Permitted Space Station List as a point of communication. Once such an application is granted, the earth station operator may communicate with any space station on the Permitted Space Station List, provided that the operation is consistent with the technical parameters and conditions established in the earth station license and any limitations placed on the space station authorization or noted in the Permitted Space Station List.

(2) Notwithstanding paragraph (k)(1) of this section, the operator of an earth station that qualifies for routine processing in the 20/30 GHz bands may not communicate with a space station on the Permitted Space Station List in the 18.3–18.8 GHz or 19.7–20.2 GHz band until the space station operator has completed coordination under Footnote US334 to § 2.106 of this chapter.

■ 8. Section 25.118 is amended as follows:

■ a. Revise paragraph (a)(2)(i);

■ b. Revise the paragraph heading in paragraph (e);

■ c. Revise paragraphs (e)(5) and (e)(8); and

■ d. Add paragraph (f).

**§ 25.118 Modifications not requiring prior authorization.**

(a) * * *

(2) * * *

(i) The added, changed, or replaced facilities conform to any applicable requirements in § 25.209;

* * * * *

(e) *Relocation of GSO space stations.* * * *

* * * * *

(5) The space station licensee certifies that it has completed any necessary coordination of its space station at the new location with other potentially affected space station operators, including coordination of station-keeping volume.

* * * * *

(8) A DBS space station licensee must certify that there will be no increase in interference due to the operations of the relocated space station that would require the Commission to submit a proposed modification to the ITU Appendix 30 Broadcasting-Satellite Service (''BSS'') Plan and/or the Appendix 30A feeder link Plan to the ITU Radiocommunication Bureau.

* * * * *

(f) *Repositioning of NGSO space stations.* A licensee may reposition NGSO space stations within an authorized orbital plane without prior Commission approval, provided the licensee notifies the Commission of the repositioning 10 days in advance by electronic filing on Form 312 in the International Bureau Filing System. The notification must specify all changes in previously authorized parameters and must certify the following:

(1) The licensee will continue to comply with the conditions of the space station license and all applicable Commission rules, including geographic coverage requirements, after the repositioning;

(2) The repositioning will not increase risk of harmful interference to other systems not permitted by coordination agreements;

(3) The licensee will not request increased interference protection because of the repositioning;

(4) The licensee will monitor collision risk during the maneuver and take any necessary evasive measures.

(5) Any change of orbital altitude entailed by the repositioning will not exceed 10 kilometers in extent or 30 days in duration and the licensee has notified, or will notify, the operator(s) of any satellite within 20 kilometers of the interim orbit at least 10 days before commencing the repositioning maneuver.

■ 9. In § 25.121, revise paragraph (d) to read as follows:

**§ 25.121 License term and renewals.**

* * * * *

(d) *Space stations.* (1) For geostationary-orbit space stations, the license term will begin at 3 a.m. Eastern Time on the date when the licensee notifies the Commission pursuant to § 25.173(b) that the space station has been successfully placed into orbit at its assigned orbital location and that its operations conform to the terms and conditions of the space station authorization.

(2) For non-geostationary orbit space stations, the license period will begin at 3 a.m. Eastern Time on the date when the licensee notifies the Commission pursuant to § 25.173(b) that operation of an initial space station is compliant with the license terms and conditions and that the space station has been placed in its authorized orbit. Operating authority for all space stations subsequently brought into service pursuant to the license will terminate upon its expiration.

* * * * *

■ 10. In § 25.129, revise paragraph (c) to read as follows:

**§ 25.129 Equipment authorization for portable earth-station transceivers.**

* * * * *

(c) In addition to the information required by § 1.1307(b) and § 2.1033(c) of this chapter, applicants for certification required by this section must submit any test data necessary to demonstrate compliance with pertinent performance standards in § 25.138, § 25.202(f), § 25.204, § 25.209, and § 25.216, must submit the statements required by § 2.1093(c) of this chapter, and must demonstrate compliance with the labeling requirement in § 25.285(b).

* * * * *

■ 11. In § 25.130, remove and reserve paragraph (e) and add paragraph (g), to read as follows:

**§ 25.130 Filing requirements for transmitting earth stations.**

* * * * *

(g) Parties may apply for a single FSS earth station license under one call sign covering operation of multiple transmitting antennas not eligible for blanket licensing under another section of this part, in the following circumstances:

(1) The antennas would transmit in frequency bands shared with terrestrial services on a co-primary basis and the antennas would be sited within an area bounded by 1 second of latitude and 1 second of longitude.

(2) The antennas would transmit in frequency bands allocated to FSS on a primary basis and there is no co-primary allocation for terrestrial services, and the antennas would be sited within an area bounded by 10 seconds of latitude and 10 seconds of longitude.

**Note to paragraph (g):** This paragraph does not apply to applications filed pursuant to §§ 25.134, 25.138, 25.221, 25.222, 25.226, or 25.227 or to applications for 29 GHz NGSO

MSS feeder link stations in a complex as defined in § 25.257.

■ 12. In § 25.131, revise the section heading and paragraphs (a), (b), (d), and (j)(2) to read as follows:

**§ 25.131 Filing requirements and registration for receive-only earth stations.**

(a) Except as provided in paragraphs (b) and (j) of this section, applications for licenses for receive-only earth stations shall be submitted on FCC Form 312, Main Form and Schedule B, accompanied by any required exhibits and the information described in § 25.130(a)(1) through (a)(5). Such applications must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

(b) Receive-only earth stations in the Fixed-Satellite Service that operate with U.S.-licensed satellites, or that operate with non-U.S.-licensed satellites on the Permitted Space Station List in accordance with paragraph (j) of this section, may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the Fixed Service in accordance with the procedures of §§ 25.203 and 25.251, subject to the stricture in § 25.209(e).

* * * * *

(d) Applications for registration must be filed on FCC Form 312, Main Form and Schedule B, accompanied by the coordination exhibit required by § 25.203 and any other required exhibits.

* * * * *

(j) * * *

(2) Operators of receive-only earth stations used to receive transmissions from non-U.S.-licensed space stations on the Permitted Space Station List need not file for licenses, provided that the space station operator and earth station operator comply with all applicable rules in this chapter and with the applicable conditions in the Permitted Space Station List.

■ 13. In § 25.132, revise paragraphs (a), (b)(1), (b)(3), and paragraph (d) introductory text to read as follows:

**§ 25.132 Verification of earth station antenna performance standards.**

(a)(1) Except for applications for 20/30 GHz earth stations and applications subject to the requirement in paragraph (b)(3) of this section, applications for transmitting earth stations in the Fixed-Satellite Service, including feeder-link stations, must include certification that the applicant has reviewed the results of a series of radiation pattern tests performed by the antenna manufacturer on representative equipment in representative configurations, and the test results demonstrate that the equipment meets the off-axis gain standards in § 25.209, measured in accordance with paragraph (b)(1) of this section. The licensee must be prepared to submit the radiation pattern measurements to the Commission on request.

(2) Applications for transmitting GSO FSS earth stations operating in the 20/30 GHz band must include the antenna measurements specified in §§ 25.138(d) and (e). Applications for transmitting NGSO FSS earth stations operating in the 20/30 GHz band must include the antenna measurements specified in § 25.138(d).

(b)(1) For purposes of paragraph (a)(1) of this section, the following measurements on a production antenna performed on calibrated antenna range, as a minimum, must be made at the bottom, middle and top of each allocated frequency band:

(i) Co-polarized patterns in the E- and H-planes for linear-polarized antennas or in two orthogonal cuts for circularly-polarized antennas:

(A) In the azimuth plane, plus and minus 7 degrees and plus and minus 180 degrees from beam peak.

(B) In the elevation plane, 0 to 45 degrees from beam peak.

(ii) Cross-polarization patterns in the E- and H-planes for linear-polarized antennas or in two orthogonal cuts for circularly-polarized antennas, plus and minus 9 degrees from beam peak.

(iii) Main beam gain.

* * * * *

(3) Except as provided in paragraph (d) of this section, applicants seeking authority to operate a Fixed-Satellite Service earth station pursuant to the requirements in § 25.218, § 25.220, § 25.221, § 25.222, § 25.223, § 25.226, or § 25.227 must submit a copy of the manufacturer's range test plots of the antenna gain patterns specified in paragraph (b)(1) of this section.

* * * * *

(d) For each new or modified transmitting antenna over 3 meters in diameter, except antennas subject to measurement under § 25.138(d), the following on-site verification measurements must be completed at one frequency on an available transponder in each frequency band of interest and submitted to the Commission.

* * * * *

■ 14. In § 25.133, revise the first sentence of paragraph (a)(1), the first sentence of paragraph (a)(2), paragraph (b)(1) introductory text, and paragraph (b)(1)(v) to read as follows:

**§ 25.133 Period of construction; certification of commencement of operation.**

(a)(1) Each initial license for an earth station governed by this part, except for blanket licenses, will specify as a condition therein the period in which construction of facilities must be completed and station operation commenced. * * *

(2) Each initial blanket license for multiple earth stations at unspecified locations will specify as a condition therein the period in which station operation must be commenced. * * *

(b)(1) Each initial license for a transmitting earth station or modified license authorizing operation of an additional transmitting antenna, except for blanket licenses, will also specify as a condition therein that upon completion of construction, the licensee must file with the Commission a certification containing the following information:

* * * * *

(v) A certification that the facility as authorized has been completed and that each antenna has been tested and found to perform within 2 dB of the applicable pattern specified in § 25.209 or other authorized pattern;

* * * * *

■ 15. In § 25.134, remove and reserve paragraph (a)(1) and revise paragraphs (b), (e), (f), (g), and (h) to read as follows:

**§ 25.134 Licensing provisions for 12/14 GHz Very Small Aperture Terminal (VSAT) and C-band Small Aperture Terminal (CSAT) networks.**

* * * * *

(b) *VSAT networks operating in the 12/14 GHz band.* An applicant for a VSAT network authorization proposing to operate with transmitted power spectral density and/or antenna input power in excess of the values specified in paragraph (g) of this section must comply with the requirements in § 25.220.

* * * * *

(e) VSAT networks operating in the 12/14 GHz bands may use more than one hub earth station, and the hubs may be sited at different locations.

(f) 12/14 GHz VSAT operators may use temporary fixed earth stations as hub earth stations or remote earth stations in their networks, but must specify, in their license applications, the number of temporary fixed earth stations they plan to use.

(g) Applications for VSAT operation in the 12/14 GHz bands that meet the

following requirements will be routinely processed:

(1) Equivalent antenna diameter is 1.2 meters or more and the application includes certification of conformance with relevant antenna performance standards in § 25.209 pursuant to § 25.132(a)(1).

(2) The maximum transmitter power spectral density of a digital modulated carrier into any GSO FSS earth station antenna does not exceed −14.0 − 10log(N) dB(W/4 kHz). For a VSAT network using a frequency division multiple access (FDMA) or a time division multiple access (TDMA) technique, N is equal to one. For a VSAT network using a code division multiple access (CDMA) technique, N is the maximum number of co-frequency simultaneously transmitting earth stations in the same satellite receiving beam.

(3) The maximum GSO FSS satellite EIRP spectral density of the digital modulated emission does not exceed 10 dB(W/4kHz) for all methods of modulation and accessing techniques.

(4) Any earth station applicant filing an application to operate a VSAT network in the 12/14 GHz bands and planning to use a contention protocol must certify that its contention protocol usage will be reasonable.

(5) The maximum transmitter power spectral density of an analog carrier into any GSO FSS earth station antenna does not exceed −8.0 dB(W/4kHz) and the maximum GSO FSS satellite EIRP spectral density does not exceed +17.0 dB(W/4kHz).

(h) VSAT operators licensed pursuant to this section are prohibited from using remote earth stations in their networks that are not designed to stop transmission when synchronization to signals from the target satellite fails.

■ 16. In § 25.135, revise the section heading, remove and reserve paragraph (b), revise paragraph (c) to read as set forth below, and remove paragraph (d):

**§ 25.135 Licensing provisions for earth station networks in the non-voice, non-geostationary Mobile-Satellite Service.**

* * * * *

(c) Transceiver units in this service are authorized to communicate with and through U.S.-authorized space stations only.

**§ 25.136 [Removed and Reserved]**

■ 17. Remove and reserve § 25.136.

■ 18. In § 25.138, revise the section heading and paragraph (a) introductory text, remove and reserve paragraph (a)(5), and revise paragraphs (b), (d), (e), (f), and (g) to read as follows:

**§ 25.138 Licensing requirements for GSO FSS Earth Stations in the 18.3–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space), and 29.25–30.0 GHz (Earth-to-space) bands.**

(a) Applications for earth station licenses in the GSO FSS in the 18.3–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz, and 29.25–30.0 GHz bands that indicate that the following requirements will be met and include the information required by paragraph (d) of this section will be routinely processed:

* * * * *

(b) An applicant proposing levels in excess of those specified in paragraph (a) of this section must certify that operators of all co-frequency GSO FSS space stations within 6 degrees of the proposed satellite point(s) of communication are aware of the applicant's proposal to operate with the higher power densities and have stated that they have no objection to such operation.

* * * * *

(d)(1) Except as provided in paragraph (d)(2) of this section, the applicant must provide, for each earth station antenna type, a series of radiation patterns measured on a production antenna. The measurements must be performed on a calibrated antenna range and, at a minimum, must be made at the bottom, middle, and top frequencies of each requested uplink band. The radiation patterns are:

(i) Co-polarized patterns in the E- and H-planes for linear-polarized antennas or in two orthogonal planes for circularly-polarized antennas:

(A) In the azimuth plane, plus and minus 10 degrees and plus and minus 180 degrees from beam peak.

(B) In the elevation plane, 0 to 30 degrees.

(ii) Cross-polarization patterns in the E- and H-planes for linear-polarized antennas or in two orthogonal planes for circularly-polarized antennas, plus and minus 10 degrees from beam peak.

(iii) Main beam gain.

(2) For antennas more than 3 meters in diameter that will only be assembled on-site, on-site measurements may be submitted. If on-site data is to be submitted, the test frequencies and number of patterns should follow, where possible, the requirements in paragraph (d)(1) of this section for at least one frequency. Certification that the on-site testing has been satisfactorily performed must be included with the certification filed pursuant to § 25.133(b).

(e) Protection of downlink reception from adjacent satellite interference is based on either the antenna performance specified in § 25.209 (a) and (b), or the actual receiving earth station antenna performance, if actual performance provides greater isolation from adjacent satellite interference. For purposes of ensuring the correct level of protection, the applicant must provide, for each earth station antenna type, antenna performance plots for the 18.3–18.8 GHz and 19.7–20.2 GHz bands in the format prescribed in paragraph (d) of this section.

(f) The holder of a blanket license pursuant to this section will be responsible for operation of any transceiver to receive service provided by that licensee or provided by another party with the blanket licensee's consent. Space station operators may not transmit communications to or from user transceivers in the United States in the 18.3–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz, or 29.25–30.0 GHz band unless such communications are authorized under an FCC earth station license.

(g) A licensee applying for renewal of a license issued pursuant to this section must specify on FCC Form 312R the number of constructed earth stations.

■ 19. Section 25.140 is amended as follows:

■ a. Revise the section heading;

■ b. Add paragraph (a);

■ c. Remove and reserve paragraphs (b)(1) and (2);

■ d. In paragraphs (b)(3), (b)(4)(i) through (iii), and (b)(5) remove the words ''paragraph (b)(2)'' and replace them with the words ''paragraph (a)''

**§ 25.140 Further requirements for license applications for geostationary space stations in the Fixed-Satellite Service and the 17/24 GHz Broadcasting-Satellite Service.**

(a) In addition to the information required by § 25.114, applicants for geostationary-orbit FSS space stations must provide an interference analysis to demonstrate the compatibility of their proposed system with respect to authorized space stations within 2 degrees of any proposed satellite point of communication. An applicant should provide details of its proposed radio frequency carriers which it believes should be taken into account in this analysis. At a minimum, the applicant must include, for each type of radio frequency carrier, the link noise budget, modulation parameters, and overall link performance analysis. (See Appendices B and C to Licensing of Space Stations in the Domestic Fixed-Satellite Service, FCC 83–184, and the following public notices, copies of which are available in the Commission's EDOCS database: DA 03–3863 and DA 04–1708.)

(b) Each applicant for a license for a 17/24 GHz Broadcasting-Satellite Service space station must provide the following information, in addition to that required by § 25.114:

* * * * *

**§ 25.142 [Amended]**

■ 20. In § 25.142, remove and reserve paragraph (c) and remove paragraph (e).

■ 21. In § 25.143, revise paragraph (b)(1) to read as set forth below, remove and reserve paragraphs (d) and (e), and remove paragraphs (i), (j) and (k):

**§ 25.143 Licensing provisions for the 1.6/2.4 GHz Mobile-Satellite Service and 2 GHz Mobile-Satellite Service.**

* * * * *

(b) * * * (1) *General Requirements.* Each application for a space station system authorization in the 1.6/2.4 GHz Mobile-Satellite Service or 2 GHz Mobile-Satellite Service must include the information specified in § 25.114. Applications for non-U.S.-licensed systems must comply with the provisions of § 25.137.

* * * * *

**§ 25.144 [Amended]**

■ 22. In § 25.144, remove paragraph (a)(3)(iii) and remove and reserve paragraph (c).

■ 23. In § 25.145, remove and reserve paragraphs (a) and (f)(1), revise paragraph (g) to read as set forth below, and remove paragraph (i):

**§ 25.145 Licensing provisions for the Fixed-Satellite Service in the 20/30 GHz bands.**

* * * * *

(g) *Protection from interference from terrestrial operation in the 18.3 to 19.3 GHz band.* Fixed-Satellite Service operators are entitled to protection from harmful interference from terrestrial stations operating in this frequency band. See §§ 21.901(e), 74.502(c), 74.602(g), 78.18(a)(4), and 101.147(r) of this chapter.

* * * * *

**§ 25.146 [Amended]**

■ 24. In § 25.146, revise the section heading to read as set forth below, remove and reserve paragraphs (c), (k), and (l), and remove paragraph (n):

**§ 25.146 Licensing and operating rules for the non-geostationary orbit Fixed-Satellite Service in the 10.7 GHz-14.5 GHz bands.**

* * * * *

■ 25. In § 25.153, revise paragraph (a) to read as follows:

**§ 25.153 Repetitious applications.**

(a) Where an application has been denied or dismissed with prejudice, the Commission will not consider a like application involving service of the same kind to the same area by the same applicant, or by its successor or assignee, or on behalf of or for the benefit of any of the original parties in interest, until after the lapse of 12 months from the effective date of the Commission's action.

* * * * *

■ 26. In § 25.154, revise paragraphs (d) and (e) to read as follows:

**§ 25.154 Opposition to applications and other pleadings.**

* * * * *

(d) Reply comments by a party that filed a petition to deny may be filed in response to pleadings filed pursuant to paragraph (c) or (e) of this section within 5 days after expiration of the time for filing oppositions unless the Commission extends the filing deadline and must be in accordance with other applicable provisions of §§ 1.41 through 1.52 of this chapter, except that such reply comments must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

(e) Within 30 days after a petition to deny an application filed pursuant to § 25.220 is filed, the applicant may file an opposition to the petition and must file a statement with the Commission, either in conjunction with, or in lieu of, such opposition, explaining whether the applicant has resolved all outstanding issues raised by the petitioner. This statement and any conjoined opposition must be in accordance with the provisions of §§ 1.41 through 1.52 of this chapter applicable to oppositions to petitions to deny, except that such reply comments must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

■ 27. In § 25.161, revise paragraph (b) to read as follows:

**§ 25.161 Automatic termination of station authorization.**

* * * * *

(b) The expiration of the license term, unless, in the case of an earth station license, an application for renewal of the license has been filed with the Commission pursuant to § 25.121(e) or, in the case of a space station license, an application for extension of the license term has been filed with the Commission; or

* * * * *

■ 28. In § 25.164, revise paragraphs (a)(4), (b)(4), (c) through (g) and add paragraph (h) to read as follows:

**§ 25.164 Milestones.**

(a) * * *

(4) *Five years:* Launch the space station, position it in its assigned orbital location, and operate it in accordance with the station authorization.

(b) * * *

(4) *Three years, six months:* Launch the first space station, place it in the authorized orbit, and operate it in accordance with the station authorization.

* * * * *

(c) Licensees of all satellite systems, other than DBS and DARS satellite systems, must either submit a copy of a binding non-contingent satellite construction contract with the Commission or notify the Commission in writing that they have not entered into such a contract, no later than 15 days after the milestone date for entering into such a contract.

(d) Licensees of all satellite systems, other than DBS and DARS satellite systems, must either submit information to the Commission sufficient to demonstrate that the licensee has completed the critical design review of the licensed satellite system or notify the Commission in writing that critical design review has not been completed, no later than 15 days after the milestone date for completion of such design review.

(e) Licensees of all satellite systems, other than DBS and DARS satellite systems, must either submit information to the Commission sufficient to demonstrate that the licensee has commenced physical construction of its licensed spacecraft or notify the Commission in writing that such construction has not commenced, no later than 15 days after the milestone date for such commencement.

(f) Licensees of all satellite systems, other than DBS and SDARS systems, must either demonstrate compliance with an applicable deadline for operation or launch and operation specified in paragraph (a) or (b) of this section or notify the Commission in writing that launch and commencement of operation has not occurred, no later than 15 days after the deadline. Compliance with a milestone requirement in paragraph (a)(4), (b)(4), or (b)(5) of this section may be demonstrated by certifying pursuant to § 25.121(d) that the space station, or

stations, has, or have, been launched and placed in the authorized orbital location or non-geostationary orbit(s) and that in-orbit operation of the space station or stations has been tested and found to be consistent with the terms of the authorization.

(g) Licensees of satellite systems that include both non-geostationary orbit satellites and geostationary orbit satellites, other than DBS and DARS satellite systems, will be required to comply with the schedule in paragraph (a) of this section with respect to the geostationary orbit satellites, and with the schedule set forth in paragraph (b) of this section with respect to the non-geostationary orbit satellites.

(h) In cases where the Commission grants a satellite authorization in different stages, such as a license for a satellite system using feeder links or inter-satellite links, the earliest of the milestone schedules will be applied to the entire satellite system.

■ 29. Add an undesignated center heading ''Reporting Requirements For Space Station Operators'' to subpart B immediately following § 25.165.

■ 30. Add § 25.170 to read as follows:

**§ 25.170 Annual reporting requirements.**

All operators of U.S.-licensed space stations and operators of non-U.S.-licensed space stations granted U.S. market access must, on June 30 of each year, file a report with the International Bureau containing the following information:

(a) Identification of any space station(s) not available for service or otherwise not performing to specifications as of May 31 of the current year, any spectrum within the scope of the part 25 license or market access grant that the space station is unable to use, the cause(s) of these difficulties, and the date when the space station was taken out of service or the malfunction was identified; and

(b) A current listing of the names, titles, addresses, email addresses, and telephone numbers of the points of contact for resolution of interference problems and for emergency response. Contact personnel should include those responsible for resolution of short term, immediate interference problems at the system control center, and those responsible for long term engineering and technical design issues.

(c) Construction progress and anticipated launch dates for authorized replacement satellites.

**Note to § 25.170:** Space station operators may also be subject to outage reporting requirements in part 4 of this chapter.

■ 31. Add § 25.171 to read as follows:

**§ 25.171 Contact information reporting requirements.**

If contact information filed in space station application or pursuant to § 25.170(b) or § 25.172(a)(1) changes, the operator must file corrected information electronically in the Commission's International Bureau Filing System (IBFS), in the ''Other Filings'' tab of the station's current authorization file. The operator must file the updated information within 10 days.

■ 32. Add § 25.172 to read as follows:

**§ 25.172 Requirements for reporting space station control arrangements.**

(a) The operator of any space station licensed by the Commission or granted U.S. market access must file the following information with the Commission prior to commencing operation with the space station, or, in the case of a non-U.S.-licensed space station, prior to commencing operation with U.S. earth stations.

(1) The information required by § 25.170(b).

(2) The call signs of any telemetry, tracking, and command earth station(s) communicating with the space station from any site in the United States.

(3) The location, by city and country, of any telemetry, tracking, and command earth station that communicates with the space station from any point outside the United States.

(4) Alternatively, instead of listing the call signs and/or locations of earth stations currently used for telemetry, tracking, and command, the space station operator may provide 24/7 contact information for a satellite control center and a list of the call signs of any U.S. earth stations, and the locations of any non-U.S. earth stations, that are used or may be used for telemetry, tracking, and command communication with the space station(s) in question.

(b) The information required by paragraph (a) of this section must be filed electronically in the Commission's International Bureau Filing System (IBFS), in the ''Other Filings'' tab of the space station's current authorization file. If call sign or location information provided pursuant to paragraph (a) of this section becomes invalid due to a change of circumstances, the space station operator must file updated information in the same manner within 30 days, except with respect to changes less than 30 days in duration, for which no update is necessary.

■ 33. Add § 25.173 to read as follows:

**§ 25.173 Results of in-orbit testing.**

(a) Space station operators must measure the co-polarized and cross-polarized performance of space station antennas through in-orbit testing and submit the measurement data to the Commission upon request.

(b) Within 15 days after completing in-orbit testing of a space station licensed under this part, the operator must notify the Commission that such testing has been completed and certify that the space station's measured performance is consistent with the station authorization and that the space station is capable of using its assigned frequencies or inform the Commission of any discrepancy. The licensee must also indicate in the filing whether the space station has been placed in the assigned geostationary orbital location or non-geostationary orbit. If the licensee files a certification pursuant to this paragraph before the space station has been placed in its assigned orbit or orbital location, the licensee must separately notify the Commission that the space station has been placed in such orbit or orbital location within 3 days after such placement and that the station's measured performance is consistent with the station authorization.

**§ 25.201 [Removed and Reserved]**

■ 34. Remove and reserve § 25.201.

■ 35. In § 25.202, revise the section heading, remove and reserve paragraph (c), and revise the first sentence in paragraph (g) to read as follows:

**§ 25.202 Frequencies, frequency tolerance, and emission limits.**

* * * * *

(g) Telemetry, tracking and command functions must be conducted at either or both edges of the allocated band(s). * * *

* * * * *

■ 36. In § 25.203, revise the first sentence in paragraph (f), the first sentence in paragraph (i) introductory text, and the second sentence of paragraph (i)(1) to read as follows:

**§ 25.203 Choice of sites and frequencies.**

* * * * *

(f) *Notification to the National Radio Astronomy Observatory:* In order to minimize possible harmful interference at the National Radio Astronomy Observatory site at Green Bank, Pocahontas County, W. Va., and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, W. Va., any applicant for operating authority under this part for a new station, other than a mobile or

temporary fixed station, within the area bounded by 39°15′ N. on the north, 78°30′ W. on the east, 37°30′ N. on the south and 80°30′ W. on the west or for modification of an existing license for such station to change the station's frequency, power, antenna height or directivity, or location must, when filing the application with the Commission, simultaneously notify the Director, National Radio Astronomy Observatory, P.O. Box No. 2, Green Bank, W. Va. 24944, in writing, of the technical particulars of the proposed station. * * *

* * * * *

(i) Any applicant for a new permanent transmitting fixed earth station to be located on the island of Puerto Rico, Desecheo, Mona, Vieques, or Culebra, or for modification of an existing authorization to change the frequency, power, antenna height, directivity, or location of such a station on one of these islands in a way that would increase the likelihood of causing interference, must notify the Interference Office, Arecibo Observatory, HC3 Box 53995, Arecibo, Puerto Rico 00612, in writing or electronically, of the technical parameters of the proposal. * * *

(1) * * * The notification must specify the geographical coordinates of the antenna (NAD–83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency, relevant FCC rule part, type of emission, effective radiated power, and whether the proposed use is itinerant. * * *

* * * * *

■ 37. In § 25.204, revise the section heading and paragraphs (e) and (f) to read as set forth below, and remove and reserve paragraph (g):

**§ 25.204 Power limits for earth stations.**

* * * * *

(e) To the extent specified in paragraphs (e)(1) through (e)(4) of this section, earth stations in the Fixed-Satellite Service may employ uplink adaptive power control or other methods of fade compensation to facilitate transmission of uplinks at power levels required for desired link performance while minimizing interference between networks.

(1) Except when paragraphs (e)(2) through (e)(4) of this section apply, transmissions from FSS earth stations in frequencies above 10 GHz may exceed the uplink EIRP and EIRP density limits specified in the station authorization under conditions of uplink fading due to precipitation by an amount not to exceed 1 dB above the actual amount of monitored excess attenuation over clear sky propagation conditions. EIRP levels must be returned to normal as soon as the attenuating weather pattern subsides. The maximum power level for power control purposes must be coordinated with adjacent satellite operators.

(2) An FSS earth station transmitting to a geostationary space station in the 13.77–13.78 GHz band must not generate more than 71 dBW EIRP in any 6 MHz band. An FSS earth station transmitting to a non-geostationary space station in the 13.77–13.78 GHz band must not generate more than 51 dBW EIRP in any 6 MHz band. Automatic power control may be used to increase the EIRP density in a 6 MHz uplink band in this frequency range to compensate for rain fade, provided that the power flux-density at the space station does not exceed the value that would result when transmitting with an EIRP of 71 dBW or 51 dBW, as appropriate, in that 6 MHz band in clear-sky conditions.

(3) FSS earth stations transmitting to geostationary space stations in the 28.35–28.6 GHz and/or 29.25–30.0 GHz bands may employ uplink adaptive power control or other methods of fade compensation. For stations employing uplink power control, the values in paragraphs (a)(1), (a)(2), and (a)(4) of § 25.138 may be exceeded by up to 20 dB under conditions of uplink fading due to precipitation. The amount of such increase in excess of the actual amount of monitored excess attenuation over clear sky propagation conditions must not exceed 1.5 dB or 15 percent of the actual amount of monitored excess attenuation in dB, whichever is larger, with a confidence level of 90 percent except over transient periods accounting for no more than 0.5 percent of the time during which the excess is no more than 4.0 dB.

(4) Transmissions in the 24.75–25.25 GHz band from 17/24 GHz BSS feeder-link earth stations employing power control may exceed the values in paragraphs (b)(1), (b)(2), and (b)(4) of § 25.223 by up to 20 dB under conditions of uplink fading due to precipitation. The amount of such increase in excess of the actual amount of monitored excess attenuation over clear sky propagation conditions must not exceed 1.5 dB or 15 percent of the actual amount of monitored excess attenuation in dB, whichever is larger, with a confidence level of 90 percent except over transient periods accounting for no more than 0.5 percent of the time during which the excess is no more than 4.0 dB.

(f) An earth station in the Fixed-Satellite Service transmitting in the 13.75–14 GHz band must have a minimum antenna diameter of 4.5 m, and the EIRP of any emission in that band should be at least 68 dBW and should not exceed 85 dBW.

* * * * *

■ 38. Revise § 25.206 to read as follows:

**§ 25.206 Station identification.**

The requirement to transmit station identification is waived for all radio stations licensed under this part with the exception of earth stations subject to the requirements of § 25.281.

■ 39. In § 25.208, revise paragraph (w) introductory text and add a note to paragraph (w) to read as follows:

**§ 25.208 Power flux density limits.**

* * * * *

(w) The power flux density at the Earth's surface produced by emissions from a 17/24 GHz BSS space station operating in the 17.3–17.7 GHz band for all conditions and all methods of modulation must not exceed the regional power flux density levels prescribed in paragraphs (w)(1) through (4) of this section.

* * * * *

**Note to Paragraph (w):** These limits pertain to the power flux-density that would be obtained under assumed free-space propagation conditions.

■ 40. Section 25.209 is amended as follows:

■ a. Revise paragraph (a) introductory text;

■ b. Remove the word ''Ka-band'' from paragraphs (a)(1) through (a)(4) and add in its place the phrase ''20/30 GHz band'';

■ c. Revise paragraph (b) introductory text;

■ d. Remove and reserve paragraph (d);

■ e. Revise the first and seventh sentences in paragraph (f);

■ f. Remove and reserve paragraph (g); and

■ g. Revise paragraph (h)(1).

**§ 25.209 Earth station antenna performance standards.**

(a) Except as provided in paragraph (f) of this section, the gain of any antenna to be employed in transmission from an earth station in the Fixed-Satellite Service shall lie below the relevant envelope defined in paragraphs (a)(1) through (4) of this section:

* * * * *

(b) Except as provided in paragraph (f) of this section, the off-axis cross-polarization gain of any antenna to be employed in transmission from an earth station to a space station in the Fixed-

Satellite Service shall be defined as follows:

* * * * *

(f) An earth station with an antenna not conforming to relevant standards in paragraphs (a) and (b) of this section will be authorized only if the applicant demonstrates that the antenna will not cause unacceptable interference. * * * For other FSS earth stations, this demonstration must comply with the requirements in §§ 25.138, 25.218, or 25.220. * * *

* * * * *

(h)(1) The gain of any transmitting gateway earth station antenna operating in the 10.7–11.7 GHz, 12.75–13.15 GHz, 13.2125–13.25 GHz, 13.8–14.0 GHz, and 14.4–14.5 GHz bands and communicating with NGSO FSS satellites must lie below the envelope defined as follows:

$29–25\log_{10}(\theta)$ dBi for $1° \leq \theta \leq 36°$

$-10$ dBi for $36° < \theta \leq 180°$

Where:

$\theta$ is the angle in degrees from the axis of the main lobe, and dBi means dB relative to an isotropic radiator.

* * * * *

■ 41. Section 25.210 is amended as follows:

■ a. Remove and reserve paragraph (b),

■ b. Revise paragraph (c),

■ c. Add a sentence to the end of paragraph (f), and

■ d. Remove paragraphs (k) and (l).

**§ 25.210 Technical requirements for space stations.**

* * * * *

(c) Space station antennas operating in the Direct Broadcast Satellite Service or operating in the Fixed-Satellite Service for reception of feeder links for Direct Broadcast Satellite Service must be designed to provide a cross-polarization isolation such that the ratio of the on-axis co-polar gain to the cross-polar gain of the antenna in the assigned frequency band is at least 27 dB within the primary coverage area.

* * * * *

(f) * * * This requirement does not apply to telemetry, tracking, and command operation.

* * * * *

■ 42. In § 25.211, revise paragraphs (d) and (e) to read as set forth below, and remove paragraph (f):

**§ 25.211 Analog video transmissions in the Fixed-Satellite Service.**

* * * * *

(d) An earth station may be routinely licensed for transmission of full-transponder analog video services in the 5925–6425 MHz band or 14.0–14.5 GHz band provided:

(1) The application includes certification, pursuant to § 25.132(a)(1), of conformance with the antenna performance standards in § 25.209(a) and (b);

(2) An antenna with an equivalent diameter of 4.5 meters or greater will be used for such transmission in the 5925–6425 MHz band, and the input power into the antenna will not exceed 26.5 dBW;

(3) An antenna with an equivalent diameter of 1.2 meters or greater will be used for such transmission in the 14.0–14.5 GHz band, and the input power into the antenna will not exceed 27 dBW.

(e) Applications for authority for analog video uplink transmission in the Fixed-Satellite Service not eligible for routine licensing under paragraph (d) of this section are subject to the provisions of § 25.220.

■ 43. In § 25.212, revise paragraphs (c), (d), and (e) to read as follows:

**§ 25.212 Narrowband analog transmissions and digital transmissions in the GSO Fixed-Satellite Service.**

* * * * *

(c)(1) An earth station that is not subject to licensing under § 25.134, § 25.222, § 25.226, or § 25.227 may be routinely licensed for analog transmissions in the 14.0–14.5 GHz band with bandwidths up to 200 kHz (or up to 1 MHz for command carriers at the band edge) if the equivalent diameter of the transmitting antenna is 1.2 meters or greater, input power spectral density into the antenna will not exceed $-8$ dBW/4 kHz, transmitted satellite carrier EIRP density will not exceed 17 dBW/4 kHz, and the application includes certification pursuant to § 25.132(a)(1) of conformance with the antenna performance standards in § 25.209(a) and (b).

(2) An earth station that is not subject to licensing under § 25.134, § 25.222, § 25.226, or § 25.227 may be routinely licensed for digital transmission, including digital video transmission, in the 14.0–14.5 GHz band if the equivalent diameter of the transmitting antenna is 1.2 meters or greater, input power spectral density into the antenna will not exceed $-14$ dBW/4 kHz, transmitted satellite carrier EIRP density will not exceed +10.0 dBW/4 kHz, and the application includes certification pursuant to § 25.132(a)(1) of conformance with the antenna performance standards in § 25.209(a) and (b).

(d) An earth station that is not subject to licensing under § 25.134 or § 25.221 may be routinely licensed for digital transmission in the 5925–6425 MHz band or analog transmission in that band with carrier bandwidths up to 200 kHz (or up to 1 MHz for command carriers at the band edge) if the equivalent diameter of the transmit antenna is 4.5 meters or greater, the application includes certification pursuant to § 25.132(a)(1) of conformance with the antenna performance standards in § 25.209(a) and (b), and maximum power density into the antenna will not exceed +0.5 dBW/4 kHz for analog carriers or $-2.7 - 10\log(N)$ dBW/4 kHz for digital carriers. For digital transmission with frequency division multiple access (FDMA) or time division multiple access (TDMA), N is equal to one. For digital transmission with code division multiple access (CDMA), N is the maximum number of co-frequency simultaneously transmitting earth stations in the same satellite receiving beam.

(e) An applicant for authority for an earth station in the Fixed-Satellite Service proposing to transmit digital signals or analog signals in bandwidths up to 200 kHz (or up to 1 MHz for command carriers at the band edge) and to operate with transmitted satellite carrier EIRP densities, and/or maximum antenna input power densities in excess of those specified in applicable provisions of paragraph (c) or (d) of this section or operate with a smaller antenna than specified in a relevant provision of those paragraphs must comply with the requirements in § 25.218 or § 25.220, unless the application is subject to licensing pursuant to § 25.221, § 25.222, § 25.226, or § 25.227.

* * * * *

■ 44. In § 25.214, remove and reserve paragraph (a) and revise paragraph (c)(1) to read as follows:

**§ 25.214 Technical requirements for space stations in the Satellite Digital Audio Radio Service and associated terrestrial repeaters.**

* * * * *

(c) * * *

(1) Exclusive SDARS licenses are limited to the 2320–2345 MHz segment of the 2310–2360 MHz allocated bandwidth for SDARS;

* * * * *

**§ 25.215 [Removed and Reserved]**

■ 45. Remove and reserve § 25.215.

■ 46. In § 25.217, revise paragraph (b)(1), the first sentence of paragraph (b)(3), and paragraph (c)(1) to read as follows:

**§ 25.217 Default service rules.**

* * * * *

(b)(1) For all NGSO-like satellite licenses for which the application was filed pursuant to the procedures set forth in § 25.157 after August 27, 2003, authorizing operations in a frequency band for which the Commission has not adopted frequency band-specific service rules at the time the license is granted, the licensee will be required to comply with the following technical requirements, notwithstanding the frequency bands specified in these rule provisions: §§ 25.142(d), 25.143(b)(2)(ii), 25.143(b)(2)(iii), 25.204(e), 25.210(d), 25.210(f), and 25.210(i).

* * * * *

(3) Mobile earth station licensees authorized to operate with one or more space stations subject to paragraph (b)(1) of this section must comply with the requirements in §§ 25.285 and 25.287, notwithstanding the frequency bands specified in those sections. * * *

(c)(1) For all GSO-like satellite licenses for which the application was filed pursuant to the procedures set forth in § 25.158 after August 27, 2003, authorizing operations in a frequency band for which the Commission has not adopted frequency band-specific service rules at the time the license is granted, the licensee will be required to comply with the following technical requirements, notwithstanding the frequency bands specified in these rule provisions: §§ 25.142(d), 25.143(b)(2)(iv), 25.204(e), 25.210(d), 25.210(f), 25.210(i), and 25.210(j).

* * * * *

■ 47. In § 25.218, revise the section heading and paragraphs (a) and (b) to read as set forth below, remove the phrase ''peak EIRP'' in paragraphs (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), and (h)(1) and add in their place the phrase ''peak EIRP density'':

**§ 25.218 Off-axis EIRP density envelopes for FSS earth stations transmitting in certain frequency bands.**

(a) This section applies to all applications for Fixed-Satellite Service earth stations transmitting to geostationary space stations in the C band, Ku band, or extended Ku band, except for:

(1) ESV, VMES, and ESAA applications, and

(2) Analog video earth station applications.

(b) Earth station applications subject to this section are eligible for routine processing if they meet the applicable off-axis EIRP density envelope set forth in this section below. The terms ''conventional Ku band'' and ''extended Ku band are defined in § 25.103.

* * * * *

■ 48. In § 25.220, revise paragraph (a)(1) to read as follows:

**§ 25.220 Non-conforming transmit/receive earth station operations.**

(a)(1) The requirements in this section apply to earth station applications of the types to which § 25.218 applies but that propose operation outside of relevant off-axis EIRP density envelopes specified in § 25.218. This section also applies to applications for full-transponder analog video earth stations that are ineligible for routine licensing under § 25.211(d).

* * * * *

■ 49. Section 25.221 is amended as follows:

■ a. Revise the section heading;

■ b. Revise the last sentence in paragraph (a)(12) and add two sentences thereafter;

■ c. Remove the word ''EIRP'' wherever it appears in paragraphs (b)(1)(i) introductory text and (b)(1)(i)(A) through (C), and add in its place the phrase ''EIRP density''; and

■ d. Remove the word ''ALSAT'' in paragraph (b)(7), and add in its place the term ''Permitted List''.

**§ 25.221 Blanket Licensing provisions for Earth Stations on Vessels (ESVs) receiving in the 3700–4200 MHz (space-to-Earth) band and transmitting in the 5925–6425 MHz (Earth-to-space) band, operating with GSO Satellites in the Fixed-Satellite Service.**

(a) * * *

(12) * * * If, prior to the end of the 30-day comment period of the public notice, any objections are received from U.S.-licensed Fixed Service operators that have been excluded from coordination, the ESV licensee must immediately cease operation of that particular station on frequencies used by the affected U.S.-licensed Fixed Service station until the coordination dispute is resolved and the ESV licensee informs the Commission of the resolution. As used in this section, ''baseline'' means the line from which maritime zones are measured. The baseline is a combination of the low-water line and closing lines across the mouths of inland water bodies and is defined by a series of baseline points that include islands and ''low-water elevations,'' as determined by the U.S. Department of State's Baseline Committee.

* * * * *

**§ 25.222 [Amended]**

■ 50. In § 25.222, remove the word ''EIRP'' wherever it appears in paragraphs (b)(1)(i) introductory text and (b)(1)(i)(A) through (C) and add in its place the phrase ''EIRP density'' and remove the word ''ALSAT'' in paragraph (b)(7) and add in its place the term ''Permitted List.''

■ 51. In § 25.223, revise the section heading and paragraphs (a) and (c) to read as set forth below and remove paragraph (e):

**§ 25.223 Alternative licensing rules for feeder-link earth stations in the 17/24 GHz BSS.**

(a) This section applies to license applications for earth stations that transmit to 17/24 GHz Broadcasting-Satellite Service space stations that are not eligible for routine processing under § 25.212(f).

* * * * *

(c) Each earth station license applicant that proposes levels in excess of those defined in paragraph (b) of this section must certify that all potentially affected parties acknowledge and do not object to the use of the applicant's higher power densities. For proposed power density levels less than or equal to 3 dB in excess of the limits defined in paragraph (b) of this section, the potentially affected parties are operators of co-frequency U.S.-authorized 17/24 GHz BSS satellites at angular separations of up to ±6° from the proposed satellite points of communication; for power density levels greater than 3 dB and less than or equal to 6 dB in excess of the limits defined in paragraph (b) of this section, potentially affected parties are operators of co-frequency U.S.-authorized satellites up to ±10° from the proposed satellite points of communication. Power density levels greater than 6 dB in excess of the limits defined in paragraph (b) of this section will not be permitted.

* * * * *

**§ 25.226 [Amended]**

■ 52. In § 25.226, remove the word ''EIRP'' wherever it appears in paragraphs (b)(1)(i) introductory text and (b)(1)(i)(A) through (C) and add in its place the phrase ''EIRP density'' and remove the word ''ALSAT'' in paragraph (b)(9) and add in its place the phrase ''Permitted List.''

**§ 25.227 [Amended]**

■ 53. In § 25.227, remove the word ''ALSAT'' from paragraph (a)(12) and add in its place the phrase ''Permitted List.''

■ 54. In § 25.259, revise paragraph (b) to read as follows:

**§ 25.259 Time sharing between NOAA meteorological satellite systems and non-voice, non-geostationary satellite systems in the 137–138 MHz band.**

* * * * *

(b) An NVNG licensee time sharing spectrum in the 137–138 MHz band must establish a 24-hour per day contact person and telephone number so that claims of harmful interference into NOAA earth stations and other operational issues can be reported and resolved expeditiously. This contact information must be made available to NOAA or its designee. If the NTIA notifies the Commission that NOAA is receiving unacceptable interference from a NVNG licensee, the Commission will require such NVNG licensee to terminate its interfering operations immediately unless it demonstrates to the Commission's reasonable satisfaction, and that of NTIA, that it is not responsible for causing harmful interference into the worldwide NOAA system. An NVNG licensee assumes the risk of any liability or damage that it and its directors, officers, employees, affiliates, agents and subcontractors may incur or suffer in connection with an interruption of its Mobile-Satellite Service, in whole or in part, arising from or relating to its compliance or noncompliance with the requirements of this paragraph.

* * * * *

■ 55. In § 25.260, revise paragraph (b) to read as follows:

**§ 25.260 Time sharing between DoD meteorological satellite systems and non-voice, non-geostationary satellite systems in the 400.15–401 MHz band.**

* * * * *

(b) An NVNG licensee time sharing spectrum in the 400.15–401 MHz band must establish a 24-hour per day contact person and telephone number so that claims of harmful interference into DoD earth stations and other operational issues can be reported and resolved expeditiously. This contact information must be made available to DoD or its designee. If the NTIA notifies the Commission that DoD is receiving unacceptable interference from a NVNG licensee, the Commission will require such NVNG licensee to terminate its interfering operations immediately unless it demonstrates to the Commission's reasonable satisfaction, and that of NTIA, that it is not responsible for causing harmful interference into the worldwide DoD system. A NVNG licensee assumes the risk of any liability or damage that it and its directors, officers, employees, affiliates, agents and subcontractors may incur or suffer in connection with an interruption of its Mobile-Satellite Service, in whole or in part, arising from or relating to its compliance or noncompliance with the requirements of this paragraph.

* * * * *

■ 56. In § 25.271, add paragraph (f) to read as follows:

**§ 25.271 Control of transmitting stations.**

* * * * *

(f) The licensee of any transmitting earth station licensed under this part must update the contact information provided in the most recent license application for the station within 10 days of any change therein. The updated information must be filed electronically in the ''Other Filings'' tab of the station's current authorization file in the International Bureau Filing System.

**§ 25.272 [Amended]**

■ 57. In § 25.272, remove and reserve paragraph (b).

■ 58. Revise § 25.276 to read as follows:

**§ 25.276 Points of communication.**

Unless otherwise specified in the station authorization, an earth station may transmit to any space station in the same radio service that is listed as a point of communication in the earth station license, provided that permission has been received from the space station operator to access that space station.

■ 59. Revise § 25.281 to read as follows:

**§ 25.281 Transmitter identification requirements for video uplink transmissions.**

(a) Earth-to-space transmissions carrying video information with analog modulation must be identified through use of an Automatic Transmitter Identification System (ATIS) with an analog identifier or a direct sequence spread spectrum signal.

(1) Use of an analog identifier must be in accordance with the following requirements:

(i) The ATIS signal must be a separate subcarrier that is automatically activated whenever any radio frequency signal is transmitted.

(ii) The ATIS message must continuously repeat.

(iii) The ATIS subcarrier signal must be generated at a frequency of 7.1 MHz ±25 kHz and modulate the uplink radio frequency carrier at a level no less than −26 dB (referenced to the unmodulated carrier).

(iv) ATIS subcarrier deviation must not exceed 25 kHz.

(v) The ATIS message protocol must be International Morse Code keyed by a 1200 Hz ±800 Hz tone representing a mark and a message rate of 15 to 25 words per minute. The tone must frequency-modulate the subcarrier signal with the ATIS message.

(vi) The ATIS message must include the FCC-assigned call sign of the transmitting earth station, a telephone number providing immediate access to personnel capable of resolving interference or coordination problems, and a unique serial number of ten or more digits programmed into the ATIS message in a permanent manner so that it cannot be readily changed by the operator on duty. Additional information may be included in the ATIS data stream provided the total ATIS message length does not exceed 30 seconds.

(2) Use of a direct sequence spread spectrum ATIS signal must be in accordance with the requirements in paragraphs (b)(1) and (2) of this section.

(b) As of June 1, 2016, transmissions of fixed-frequency, digitally modulated video signals with a symbol rate of 128,000/s or more from Satellite News Gathering vehicles or other temporary-fixed earth stations must be identified through use of an ATIS in accordance with the following requirements:

(1) The ATIS message must be modulated onto a direct sequence spread spectrum signal in accordance with the DVB–CID standard, ETSI TS 103 129 (2013–05), ''Technical Specification, Digital Video Broadcasting (DVB); Framing structure, channel coding and modulation of a carrier identification system (DVB–CID) for satellite transmission.'' This document is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and approved by the Director of the Federal Register. The ETSI document may be obtained from ETSI, 650 Route des Lucioles, 06921 Sophia Antipolis Cedex, France and by email to *webstore@etsi.org* and a copy can be downloaded from *http://www.etsi.org.* You may inspect a copy at the Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, or 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/code_of_federal_regulations/ibr_locations.html.*

(2) The ATIS message must continuously repeat.

(c) ATIS equipment must be integrated into the uplink transmitter chain with a method that cannot easily be defeated.

■ 60. Add § 25.285 to part 25, subpart D, to read as follows:

**§ 25.285 Operation of MSS and ATC transmitters or transceivers on board civil aircraft.**

(a) Operation of any of the following devices aboard civil aircraft is prohibited, unless the device is installed in a manner approved by the Federal Aviation Administration or is used by the pilot or with the pilot's consent:

(1) Earth stations capable of transmitting in the 1.5/1.6 GHz, 1.6/2.4 GHz, or 2 GHz Mobile-Satellite Service frequency bands;

(2) ATC terminals capable of transmitting in the 1.5/1.6 GHz, 1.6/2.4 GHz, or 2 GHz MSS bands;

(3) Earth stations used for non-voice, non-geostationary Mobile-Satellite Service communication that can emit radiation in the 108–137 MHz band.

(b) No portable device of any type identified in paragraph (a) of this section (including transmitter or transceiver units installed in other devices that are themselves portable) may be sold or distributed to users unless it conspicuously bears the following warning: ''This device must be turned off at all times while on board aircraft.'' For purposes of this section, a device is portable if it is a ''portable device'' as defined in § 2.1093(b) of this chapter or is designed to be carried by hand.

■ 61. Add § 25.286 to part 25, subpart D, to read as follows:

**§ 25.286 Antenna painting and lighting**

The owner of an earth station antenna structure must comply with all applicable painting, marking, and/or lighting requirements in part 17 of this chapter. In the event of default by the owner, the station licensee will be responsible for ensuring that such requirements are met.

■ 62. Add § 25.287 to part 25, subpart D, to read as follows:

**§ 25.287 Requirements pertaining to operation of mobile stations in the NVNG, 1.5/1.6 GHz, 1.6/2.4 GHz, and 2 GHz Mobile-Satellite Service bands.**

(a) Any mobile earth station (MES) operating in the 1530–1544 MHz and 1626.5–1645.5 MHz bands must have the following minimum set of capabilities to ensure compliance with Footnote 5.353A in 47 CFR 2.106 and the priority and real-time preemption requirements imposed by Footnote US315.

(1) All MES transmissions must have a priority assigned to them that preserves the priority and preemptive access given to maritime distress and safety communications sharing the band.

(2) Each MES with a requirement to handle maritime distress and safety data communications must be capable of either:

(i) Recognizing message and call priority identification when transmitted from its associated Land Earth Station (LES), or

(ii) Accepting message and call priority identification embedded in the message or call when transmitted from its associated LES and passing the identification to shipboard data message processing equipment.

(3) Each MES must be assigned a unique terminal identification number that will be transmitted upon any attempt to gain access to a system.

(4) After an MES has gained access to a system, the mobile terminal must be under control of an LES and must obtain all channel assignments from it.

(5) All MESs that do not continuously monitor a separate signaling channel or signaling within the communications channel must monitor the signaling channel at the end of each transmission.

(6) Each MES must automatically inhibit its transmissions if it is not correctly receiving separate signaling channel or signaling within the communications channel from its associated LES.

(7) Each MES must automatically inhibit its transmissions on any or all channels upon receiving a channel-shut-off command on a signaling or communications channel it is receiving from its associated LES.

(8) Each MES with a requirement to handle maritime distress and safety communications must have the capability within the station to automatically preempt lower precedence traffic.

(b) Any LES for an MSS system operating in the 1530–1544 MHz and 1626.5–1645.5 MHz bands must have the following minimum set of capabilities to ensure compliance with Footnotes 5.353A and the priority and real-time preemption requirements imposed by Footnote US315. An LES fulfilling these requirements must not have any additional priority with respect to FSS stations operating with other systems.

(1) LES transmissions to MESs must have a priority assigned to them that preserves the priority and preemptive access given to maritime distress and safety communications pursuant to paragraph (a) of this section.

(2) The LES must recognize the priority of calls to and from MESs and make channel assignments taking into account the priority access that is given to maritime distress and safety communications.

(3) The LES must be capable of receiving the MES identification number when transmitted and verifying that it is an authorized user of the system to prohibit unauthorized access.

(4) The LES must be capable of transmitting channel assignment commands to the MESs.

(5) The communications channels used between the LES and the MES shall have provision for signaling within the voice/data channel, for an MES that does not continuously monitor the LES signaling channel during a call.

(6) The LES must transmit periodic control signals to MESs that do not continuously monitor the LES signaling channel.

(7) The LES must automatically inhibit transmissions to an MES to which it is not transmitting in a signaling channel or signaling within the communications channel.

(8) The LES must be capable of transmitting channel-shut-off commands to MESs on signaling or communications channels.

(9) Each LES must be capable of interrupting, and if necessary, preempting ongoing routine traffic from an MES in order to complete a maritime distress, urgency or safety call to that MES.

(10) Each LES must be capable of automatically turning off one or more of its associated channels in order to complete a maritime distress, urgency or safety call.

(c) No person without an FCC license for such operation may transmit to a space station in the NVNG, 1.5/1.6 GHz, 1.6/2.4 GHz, or 2 GHz Mobile-Satellite Service from anywhere in the United States except to receive service from the holder of a pertinent FCC blanket license or from another party with the permission of such a blanket licensee.

(d) The holder of an FCC blanket license for operation of mobile transmitters or transceivers for communication via an NVNG, 1.6/2.4 GHz, 1.5/1.6 GHz, or 2 GHz Mobile Satellite Service system will be responsible for operation of any such device to receive service provided by that licensee or provided by another party with the blanket licensee's consent. Operators of such satellite systems must not transmit communications to or from such devices in the United States unless such communications are authorized under a service contract with the holder of a pertinent FCC blanket earth station license or under a service contract with another party with authority for such operation delegated by such a blanket licensee.

[FR Doc. 2014–02213 Filed 2–11–14; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 79, No. 29
Wednesday, February 12, 2014

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

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### 7 CFR Parts 1753 and 1755

**RIN 0572–AC29**

## New Equipment Contract for Telecommunications and Broadband Borrowers

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

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS), a Rural Development agency of the United States Department of Agriculture (USDA), hereinafter referred to as RUS or the Agency, is proposing to amend the telecommunications standards and specifications for material, equipment and construction regulations by streamlining and replacing Equipment Specific Contracts, RUS Forms 397, 398, 525, 545, and the associated documents (Forms 231, 396, 396a, 397b, 397c, 397d, 397f, 397g, 397h, 517, 525a, 744, 752a, 754, and addenda) with a new Equipment Contract, RUS Form 395 and the associated close-out documents (Forms 395a, 395b, 395c and 395d). The proposed rule includes conforming changes to reflect the use of the new contract, administrative updates, and addresses the discontinuance of the requirement for RUS borrowers to use the Informational Publication (I.P.) 344–2, ''List of Material Acceptable for Use on Telecommunications Systems of RUS Borrowers.'' The intended effect is to streamline the contractual process for RUS borrowers and expedite the approval process of equipment during the development of RUS funded construction projects.

**DATE:** Comments, electronic and/or paper, must be submitted on or before April 14, 2014. Late comments will not be considered.

**ADDRESSES:** Submit comments by either of the following methods:

- Federal Rulemaking Portal at *http://www.regulations.gov*. Follow instructions for submitting comments.
- Postal Mail/Commercial Delivery: Please send your comments addressed to Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, STOP 1522, Room 5162, Washington, DC 20250–1522.

Additional information about Rural Development and its programs is available on the Internet at *http://www.rurdev.usda.gov/index.html.*

**FOR FURTHER INFORMATION CONTACT:** Norberto Esteves, Chief, Technical Staff Branch, Rural Utilities Service, Telecommunications Program, U.S. Department of Agriculture, STOP 1550, 1400 Independence Ave. SW., Washington, DC 20250–1550, Telephone number: (202) 720–0699.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and therefore has not been reviewed by the Office of Management and Budget (OMB).

### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

### Executive Order 12372

This proposed rule is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review'', as implemented under USDA's regulations at 7 CFR part 3015.

### Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). RUS provides loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

### Environmental Impact Statement

This rule has been examined under Agency environmental regulations at 7 CFR part 1794. The Administrator has determined that this action is not a major action Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement or Assessment is not required.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this program is 10.851. The Catalog is available on the Internet at *http://www.cfda.gov.*

### Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Therefore, this proposed rule is not subject to the requirements of §§ 202 and 205 of the Unfunded Mandates Reform Act of 1995.

### E-Government Act Compliance

RUS is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

### Executive Order 13132, Federalism

The policies contained in this proposed rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this

proposed rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

**Executive Order 13175, Consultation and Coordination With Indian Tribal Governments**

Executive Order 13175 imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this proposed rule does not have a substantial direct effect on one or more Indian tribes(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which Rural Development is not aware and would like to engage in consultation with Rural Development on this rule, please contact Rural Development's Native American Coordinator at (720) 544–2911 or *AIAN@wdc.usda.gov.*

**Information Collection and Recordkeeping Requirements**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

Comments on this notice must be received by April 14, 2014.

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

Comments may be sent to Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Stop 1522, Room 5159 South Building, Washington, DC 20250–1522, Fax: (202) 720–8435.

*Title:* Form 395, Equipment Contract & Associated Forms

*OMB Control Number:* 0572–NEW.

*Type of Request:* Approval of a new collection.

*Abstract:* In order to ensure that RUS loans are adequately secured as required by the Rural Electrification Act of 1936 (RE Act) (7 U.S.C. 901 *et seq.*), the Agency has established certain standardized forms for materials, equipment and construction of electric and telecommunications systems. The use of standard forms, construction contracts, and procurement procedures helps to ensure that appropriate standards and specifications are maintained by the borrower, the Agency's loan security is not adversely affected, and the loan and loan guarantee funds are used effectively and for the intended purposes.

The new Equipment Contract, RUS Form 395 and the associated close-out documents (Forms 395a, 395b, 395c and 395d) will replace the current Equipment Specific Contracts, RUS Forms 397, 398, 525, 545, and the associated documents (Forms 231, 396, 396a, 397b, 397c, 397d, 397f, 397g, 397h, 517, 525a, 744, 752a, 754, and addenda). Contract terms and obligations in the RUS's new Equipment Contract, RUS Form 395, reflects present RUS and private sector practices, as well as changes in technology, services and equipment. The new RUS forms will streamline the contractual process for the RUS Borrower and expedite the approval process of equipment during the duration of the project.

The specific purposes and uses of the proposed new contract forms are as follows:

(1) New Contract Form

- *RUS Form 395, Equipment Contract.*

This form will be used for equipment purchases.

(2) New Associated Forms with RUS Form 395

- *RUS Form 395a, Certificate of Completion (Equipment Contract Including Installation).*

This form will be used for the closeout of RUS Form 395 when the contract includes installation.

- *RUS Form 395b, Certificate of Completion (Equipment Contract Not Including Installation).*

This form will be used to amend contracts except for distribution line construction contracts.

- *RUS Form 395c, Certificate of Contractor and Indemnity Agreement.*

This form will be used in the closeout of RUS Form 395.

- *RUS Form 395d, Results of Acceptance Tests.*

This is a suggestive form to be used to report results of acceptance testing of equipment for purposes of closing out the contract.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .25 hours per response.

*Estimated Number of Respondents:* 284.

*Estimated Number of Total Annual Responses per Respondents:* 284.

*Estimated Total Annual Burden on Respondents:* 71 hours.

Copies of this information collection can be obtained from Michele L. Brooks, Director, Program Development and Regulatory Analysis, at (202) 690–1078.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**Background**

Rural Development is a mission area within the U.S. Department of Agriculture comprising the Rural Housing Service, Rural Business/Cooperative Service, and Rural Utilities Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants and technical assistance through more than 40 programs aimed at creating and improving housing, businesses and infrastructure throughout rural America.

The Rural Utilities Service (RUS) loan, loan guarantee and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecom and broadband infrastructure, RUS also plays a big role in improving other measures of quality of life in rural America, including public health and safety, environmental protection, conservation and cultural and historic preservation.

The purpose of this undertaking is to improve customer service to the Agency's rural borrowers. Divestiture, competition, legislation and regulations have changed business practices in the telecommunications industry. Over the past three years, RUS has undertaken a comprehensive review of its Telecommunications Program contracts. Traditional telecommunications borrowers, as well as broadband borrowers, benefit from the new RUS Form 395 because most of the revisions are a result of the changes the telecommunications industry has experienced as it has transitioned from

narrowband to broadband. The new RUS Form 395 can assist both types of borrowers with the purchase of equipment specifically designed to meet or exceed a typical narrowband or broadband system.

In order to continue to facilitate the programmatic interest of the Rural Electrification Act of 1936 (the ''RE Act''), as amended (7 U.S.C. 901 *et seq.*), that loans and loans guaranteed by RUS are adequately secured, RUS has established certain standardized forms for materials, equipment and construction of electric and telecommunications systems. The use of standard forms, construction contracts, and procurement procedures helps to assure that appropriate standards and specifications are maintained by the borrower in order not to adversely affect RUS's loan security and that loan and loan guarantee funds are effectively used for intended purpose(s).

Contract terms and obligations in the new RUS Form 395, Equipment Contract reflects present RUS and private sector practices, as well as changes in technology, services and equipment. The new RUS Form 395, Equipment Contract and associated close-out documents (Forms 395a, 395b, 395c and 395d) will replace the current Equipment Specific Contracts, RUS Forms 397, 398, 525, 545, and the associated documents (Forms 231, 396, 396a, 397b, 397c, 397d, 397f, 397g, 397h, 517, 525a, 744, 752a, 754, and addenda). The new RUS forms will streamline the contracting process for the RUS Borrower and expedite the approval process of equipment during the duration of the project.

This proposed rule will also remove references to Informational Publication (I.P.) 344–2, ''List of Material Acceptable for Use on Telecommunications Systems of RUS Borrowers'' (List of Materials) from the Telecommunications Program regulations. Historically, the List of Materials has been a useful tool in assuring product quality and reliability of equipment used in the development of RUS funded construction projects. One method for a product not having field-deployment experience in a commercial setting to be placed on the list was a ''field trial''. The ''field trials'' process, as well as maintaining the List of Materials was a labor intensive product-by-product review by Agency staff. Since the start of the Agency's Telecommunications Program in 1949, technology has changed dramatically. The telecommunications equipment supply sector is very different, and far more complex and diverse, today than it was over 60 years ago. Product life cycles have accelerated, innovations abound and new suppliers have entered the market. The Agency has undertaken a fundamentally new approach to advancing state-of-the-art telecommunications technologies, while maintaining a consistent commitment to high quality rural service and the efficient use of taxpayer dollars. In this new technology environment, RUS must operate efficiently and effectively under current budgetary constraints. Maintaining the List of Materials, which includes a product-by-product review, simply cannot be sustained under our current budget and with our limited staff. RUS, therefore, has discontinued accepting applications as well as publishing the List of Materials as of May 23, 2011. Field trials are no longer needed and have been discontinued as well. However, in order to protect RUS's loan security and compliance with continuing Buy America statutory mandates, the Agency has transitioned from a listing process to an approach which ensures that construction financed by RUS meets applicable industry standards. This new approach is incorporated into the review of individual projects and the approval of loan advances. The intended effect is to streamline the contractual process for RUS borrowers and expedite the approval process of equipment during the development of RUS funded construction projects.

**List of Subjects**

*7 CFR Part 1753*

Communications equipment; Loan programs—Telecommunications; Reporting and recordkeeping requirements; Rural areas; and Telephone.

*7 CFR Part 1755*

Loan programs—Telecommunications; Reporting and recordkeeping requirements; Rural areas; and Telecommunications.

For the reasons set forth in the preamble, the Rural Utilities Service proposes to amend Chapter XVII of Title 7 of the Code of Federal Regulations by proposing to amend parts 1753 and 1755.

## PART 1753—TELECOMMUNICATIONS SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

■ 1. The authority citation for part 1753 continues to read as follows:

**Authority:** 5 U.S.C. 501, 7 U.S.C. 901 *et seq.*

### Subpart A—General

■ 2. In § 1753.2, remove the definition of the RTB.

■ 3. Amend § 1753.6 by revising paragraph (a) to read as follows:

**§ 1753.6 Standards, specifications, and general requirements.**

(a) Materials, equipment, and construction financed with loan funds must meet the standards and specifications established by RUS 7 CFR part 1755 which lists the RUS Bulletins containing the standards and specifications for telephone facilities.

* * * * *

■ 4. Amend § 1753.7 by:

■ a. Revising paragraph (c),

■ b. Removing paragraph (f)(4).

The revision reads as follows:

**§ 1753.7 Plans and specifications (P&S).**

* * * * *

(c) The appropriate standards and specifications listed in 7 CFR part 1755 shall be included in the P&S. When RUS has not prepared standards and specifications, the borrower shall use all appropriate project specific engineering requirements and specifications prepared by the borrower's engineer. The specifications prepared by the borrower's engineer and based on appropriate project specific engineering requirements shall be subject to review and approval by RUS for all major construction, including major projects which would be exempted from RUS approval under paragraph (e) of this section.

* * * * *

■ 5. Amend § 1753.9 by revising paragraphs (a) and (c) to read as follows:

**§ 1753.9 Subcontracts.**

(a) RUS construction contract Forms 257, 395, and 515, contain provisions for subcontracting. Reference should be made to the individual contracts for the amounts and conditions under which a contractor may subcontract work under the contract.

* * * * *

(c) As stated in contract Forms 257, 395, and 515, the contractor shall bear full responsibility for the acts and omissions of the subcontractor and is not relieved of any obligations to the borrower and to the Government under the contract.

* * * * *

### Subpart B—Engineering Services

■ 6. Amend § 1753.18 by revising paragraph (c) to read as follows:

**§ 1753.18 Engineer and architect contract closeout certifications.**

* * * * *

(c) A statement that construction used was in accordance with specifications published by RUS covering the construction which were in effect when the contract was executed, or in the absence of such specifications, that it meets other applicable specifications and standards and that it meets all applicable national and local code requirements as to strength and safety.

* * * * *

## Subpart E—Purchase and Installation of Central Office Equipment

■ 7. Amend § 1753.36 by revising paragraphs (b), (c), (e), and (g) to read as follows:

**§ 1753.36 General.**

* * * * *

(b) Terms used in this subpart are defined in § 1753.2 and RUS Contract Form 395.

(c) Borrowers shall use RUS Contract Form 395, Equipment Contract and associated RUS Form 395a, Equipment Contract Certificate of Completion (Including Installation), when the firm supplying the equipment will install it and RUS Contract Form 395, Equipment Contract and associated RUS Form 395b, Equipment Contract Certificate of Completion (Not Including Installation) when the supplier of the equipment will not be installing it. In either case the appropriate specifications shall be included in the contract.

* * * * *

(e) The borrower shall take sealed competitive bids for all central office equipment to be purchased under RUS Contract Form 395 using the procedure set forth in Sec. 1753.38(a), unless RUS approval to negotiate is obtained.

* * * * *

(g) Materials and equipment must meet the standards and general specifications approved by RUS.

* * * * *

■ 8. Amend § 1753.37 by revising paragraphs (a) and (b) to read as follows:

**§ 1753.37 Plans and specifications (P&S).**

(a) General. (1) Prior to the preparation of P&S, the borrower shall review with the GFR the current and future requirements for central office equipment.

(2) The P&S shall specify the delivery and completion time required for each exchange.

(3) P&S for equipment to be provided under a Form 395 contract without installation shall require the supplier to provide specific installation information and a detailed bonding and grounding plan to be utilized by the engineer, borrower, and others responsible for the installation of the equipment.

(b) Preparation of P&S. The P&S shall include RUS Contract Form 395, Notice and Instructions to Bidders, specifications for the required equipment for each exchange, provision for spare parts, and all other pertinent data needed by the bidder to complete its proposal.

* * * * *

■ 9. Amend § 1753.38 by:

■ a. Revising paragraphs (a)(1)(i), (a)(1)(iii), (a)(2)(i)(J), (a)(2)(v)

■ b. Revising (b)(10),

■ c. Removing paragraph (c) and redesignating paragraphs (d), (e), and (f), paragraph (d) as newly designated paragraphs (c), paragraph (e) as newly designated paragraph (d) and (f) as newly designated paragraph (e); and

■ d. Revising newly redesignated paragraphs (d)(3) and (d)(5).

The revisions read as follows:

**§ 1753.38 Procurement procedures.**

(a) * * *

(1) * * *

(i) After RUS approval of the specifications and equipment requirements (required only for projects expected to exceed $500,000 or 25% of the loan, whichever is less), the borrower shall send ''Notice and Instructions to Bidders'' to suppliers with central office equipment.

* * * * *

(iii) RUS Contract Form 395 shall be used, except that the ''Notice'' shall state that prior to the bid opening a technical session will be conducted with each supplier to resolve any questions related to the technical proposal submitted by the supplier. The suppliers' technical proposals should be requested for presentation 30 days in advance of the bid opening to enable sufficient time to make the technical evaluation.

* * * * *

(2) * * *

(i) * * *

(J) Some types of equipment contain software. Equipment Contract (RUS Form 395) indicates whether the equipment contains software and whether the software contract stipulations are applicable.

* * * * *

(v) After evaluation of the technical proposals and RUS approval of the changes to P&S (required only for projects that are expected to exceed $500,000 or 25% of the loan, whichever is less), sealed bids shall be solicited from only those bidders whose technical proposals meet P&S requirements. When fewer than three bidders are adjudged qualified by the borrower to bid, RUS approval must be obtained to proceed. Generally, RUS will grant such approval only if the borrower can demonstrate to the satisfaction of RUS that a good faith effort was made to obtain at least three competitive bids.

* * * * *

(b) * * *

(10) Installation of the central office equipment and materials provided under RUS Contract Form 395 may be made in accordance with subpart I, if applicable, or by an approved Force Account Proposal (FAP).

* * * * *

(d) * * *

(3) If RUS approval was required by paragraph (d)(2) of this section, upon RUS approval the purchase may be made using RUS Contract Form 395, or when applicable, the procedures contained in subpart I of this part.

* * * * *

(5) Installation of the central office equipment and materials procured by RUS Contract Form 395 without installation may be made in accordance with subpart I, if applicable, or by an approved FAP.

* * * * *

■ 10. Revise § 1753.39 to read as follows:

**§ 1753.39 Closeout documents.**

Closeout of RUS Contract Form 395 Equipment Contract (including or not including installation) shall be conducted as follows:

(a) *Contract amendments.* Amendments that must be submitted to RUS for approval, as required by 7 CFR 1753.11, shall be submitted promptly. All other amendments may be submitted to RUS with the engineer's contract closeout certification.

(b) *Acceptance tests.* The borrower will perform acceptance tests as part of the partial closeout and final closeout of RUS Contract Form 395 that will demonstrate compliance with the requirements as specified by the borrower's engineer in the Performance Requirements. Other tests demonstrating compliance will be acceptable.

(c) *Grounding system audit.* A grounding system audit shall be performed and found acceptable for equipment provided under RUS Contract Form 395, Equipment Contract (including or not including installation), prior to placing a central office or remote switching terminal into full service operation. The audits are to be conducted in accordance with the

requirements specified by the borrower's engineer in the Performance Requirements. The audits shall be performed by the contractor and borrower when using the Form 395 with equipment installation and by the borrower when using the Form 395 without equipment installation.

(d) *Partial Closeout Procedure.* Under conditions set forth in RUS Contract Form 395, a contractor may, when approved by the borrower, receive payment in full for central offices and their respective associated remote switching terminals upon completion of the installation without awaiting completion of the project. The contractor is to receive such payment, according to procedures contained in the applicable sections of RUS Contract Form 395. In addition to complying with the appropriate partial closeout procedure contained in RUS Contract Form 395, the borrower shall:

(1) Obtain from the engineer a certification of partial closeout; and

(2) Submit one copy of the summary to RUS with an FRS.

(e) *Final contract closeout procedure.* The documents required for the final closeout of the equipment contract, RUS Contract Form 395 with or without installation, are listed in the following table, which also indicates the number of copies and their distribution. The procedure to be followed is as follows:

DOCUMENTS REQUIRED TO CLOSE OUT RUS FORM 395—EQUIPMENT CONTRACTS

| RUS form No. | Description | Number of copies prepared by | | Distribution | |
|---|---|---|---|---|---|
| | | Seller | Engineer | Buyer | Seller |
| 213 | Certificate (Buy American) | 1 | | 1 | |
| 238 | Construction or Equipment Contract Amendment (If not previously submitted, send to RUS for approval). | | 3 sent to RUS | 1 from RUS | 1 from RUS. |
| 395a | Certificate of Completion for Equipment Contract (Including Installation). | | 2 | 1 | 1. |
| 395b | Certificate of Completion for Equipment Contract (Not Including Installation). | | 2 | 1 | 1. |
| 395c | Certificate of Contractor and Indemnity Agreement (Use only for installation contracts). | 1 | | 1 | |
| None | Report in writing, including all measurements, any acceptance test report and other information required under Part II of the applicable specifications (Form 395d may be used). | | 1 | 1 | |
| None | Set of maintenance recommendations for all equipment furnished under the contract. | 1 | | 1 | |

(f) Once RUS approval has been obtained for any required amendments, the borrower shall obtain certifications from the engineer that the project and all required documentation are satisfactory and complete. The requirements for the final contract certification are contained in § 1753.18.

(g) Once these certifications have been received, final payment shall be made according to the payment terms of the contract. Copies of the certifications shall be submitted with the FRS, requesting the remaining funds on the contract.

## Subpart F—Outside Plant Major Construction by Contract

■ 11. Amend § 1753.47 by revising paragraphs (a)(2) and (b)(5) to read as follows:

### § 1753.47 Plans and specifications (P&S).

(a) * * *

(2) The standard RUS specifications required for construction of outside plant facilities are:

(i) RUS Form 515a (Bulletin 1753F–150)—Specifications and Drawings for Construction of Direct Buried Plant.

(ii) RUS Form 515b (Bulletin 1753F–151)—Specification and Drawings for Construction of Underground Plant.

(iii) RUS Form 515c (Bulletin 1753F –152)—Specifications and Drawings for Construction of Aerial Plant.

(iv) RUS Form 515d (Bulletin 1753F –153)—Specification and Drawings for Service Installation at Customer Access Locations.

(b) * * *

(5) RUS Contract Form 787, ''Supplement A to Construction Contract, RUS Contract Form 515,'' when the borrower proposes to provide any materials to the contractor. The borrower shall not order materials for a contractor without RUS approval. In such cases the borrower must attach Form 787 and a ''List of Owner's Materials on Hand'' and/or a ''List of Materials Ordered by Owner but Not Delivered'' to contract Form 515 (See § 1753.48(f) of this part). Any materials furnished under Supplement A shall be in compliance with the RUS Buy American requirement unless special RUS approval has been received by the borrower to use non-domestic materials.

* * * * *

## Subpart H—Purchase and Installation of Special Equipment

■ 12. Revise § 1753.66 to read as follows:

### § 1753.66 General.

(a) This subpart implements and explains the provisions of the Loan Documents setting forth the requirements and the procedures to be followed by borrowers in purchasing and installing special equipment financed with loan funds.

(b) Terms used in this subpart are defined in § 1753.2 and RUS Form 395.

(c) Borrowers must obtain RUS review and approval of the LD for their telephone systems. Applications of equipment not included in an approved LD must conform to the modernization plan as required by 7 CFR part 1751, subpart B, and must be submitted to RUS for review and approval.

(d) RUS Form 395 and applicable specifications shall be used for the purchase of special equipment for major construction on a furnish-and-install basis, as well as on a furnish-only basis.

(e) The procedures provided in subpart I, if applicable, or a FAP approved by RUS may be used for the installation of special equipment purchased with a Form 395 contract not including installation.

(f) For special equipment purchases for minor construction, the borrower may at its option use the Methods of Minor Construction procedures

contained in subpart I or the purchase procedures contained in this subpart H.

(g) Some types of special equipment contain software. Equipment Contract (RUS Form 395) indicates whether the equipment contains software and whether the software contract stipulations are applicable.

■ 13. Revise § 1753.to reads as follows:

**§ 1753.67 Contracts and specifications.**

(a) Equipment Contract, RUS Form 395 shall be used to purchase equipment on a furnish-and-install basis, as well as on a furnish-only basis.

(b) The equipment specifications must accompany the equipment contract form and each specification consists of performance specifications, installation requirements (if applicable), and application engineering requirements.

■ 14. Amend § 1753.68:

■ a. In paragraph (a)(1)(iv) by removing the term ''Form 398 Contract'' and adding in its place ''Form 395 without installation'';

■ b. In paragraph (a)(8) by removing the term ''Form 397'' and adding in its place ''Form 395'';

■ c. By revising paragraph (a)(9);

■ d. In paragraph (d)(1) by removing the term ''Form 397'' and adding in its place ''Form 395 with installation'';

■ e. In paragraph (d)(2) by removing the term ''Form 398'' and adding in its place ''Form 395 without installation'' and redesignate paragraph (d)(2)(i) as (d)(2);

■ f. In paragraph (d)(3)(i) by removing the phrase ''special equipment contract'' and adding in its place the phrase ''equipment contract''

■ g. By revising the table in paragraph (d)(3)(i).

The revisions read as follows:

**§ 1753.68 Purchasing special equipment.**

(a)* * *

(9) The specifications for the various applications of equipment is prepared by the RUS borrower's engineer and based on generally accepted engineering considerations and practices found in the Telecommunications Industry.

* * * * *

DOCUMENTS REQUIRED TO CLOSE OUT RUS FORM 395—EQUIPMENT CONTRACTS

| RUS form No. | Description | Number of copies prepared by | | Distribution | |
|---|---|---|---|---|---|
| | | Seller | Engineer | Buyer | Seller |
| 213 | Certificate (Buy American) | 1 | | 1 | |
| 238 | Construction or Equipment Contract Amendment (If not previously submitted, send to RUS for approval). | | 3 sent to RUS | 1 sent to RUS | 1 from RUS. |
| 395a | Certificate of Completion for Equipment Contract (Including Installation). | | 2 | 1 | 1. |
| 395b | Certificate of Completion for Equipment Contract (Not Including Installation). | | 2 | 1 | 1. |
| 395c | Certificate of Contractor and Indemnity Agreement (Use only for installation contracts). | | | 1 | |
| None | Report in writing, including all measurements, any acceptance test report and other information required under Part II of the applicable specifications. (Form 395d may be used.). | | 1 | 1 | |
| None | Set of maintenance recommendations for all equipment furnished under the contract. | 1 | | 1 | |

* * * * *

## Subpart I—Minor Construction

■ 15. Amend § 1753.80 by:

■ a. In paragraph (b)(3) by removing the phrase ''special equipment'' and adding in its place ''equipment''; and

■ b. By revising paragraph (d)(2).

The revision reads as follows:

**§ 1753.80 Minor construction procedure.**

* * * * *

(d) * * *

(2) All standard RUS procedures are followed, including the application of RUS construction practices (See § 1753.6).

* * * * *

## Subpart J—Construction Certification Program

**§ 1753.93 [Amended]**

■ 16. In § 1753.93, remove paragraphs (b)(7) and (b)(8) and redesignate paragraphs (b)(9) as newly designated paragraph (b)(7), (b)(10) as newly designated paragraph (b)(8), (b)(11) as newly designated paragraph (b)(9), (b12) as newly designated paragraph (b)10), and (b)(13) as newly designated paragraph (b)(11).

**§ 1753.96 [Amended]**

■ 17. Amend the Certification Addendum in § 1753.96 by removing the words ''or Rural Telephone Bank,'' from the second sentence.

## PART 1755—TELECOMMUNICATIONS POLICIES ON SPECIFICATIONS, ACCEPTABLE MATERIALS, AND STANDARD CONTRACT FORMS

■ 18. The authority citation for part 1755 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

**§ 1755.3 [Removed and Reserved]**

■ 19. Remove and reserve § 1755.3

■ 20. Amend § 1755.30 by:

■ a. Revising paragraphs (c)(25) through (45); and

■ b. Removing paragraphs (c)(46) through paragraphs (56).

The revisions read as follows:

**§ 1755.30 List of telecommunications standard contract forms.**

* * * * *

(c) * * *

(25) RUS Form 395, [EFFECTIVE DATE OF FINAL RULE], Equipment Contract.

(26) RUS Form 395a, [EFFECTIVE DATE OF FINAL RULE], Equipment Contract Certificate of Completion (Including Installation).

(27) RUS Form 395b, [EFFECTIVE DATE OF FINAL RULE], Equipment Contract Certificate of Completion (Not Including Installation).

(28) RUS Form 395c, [EFFECTIVE DATE OF FINAL RULE], Certificate of Contractor and Indemnity Agreement.

(29) RUS Form 395d, [EFFECTIVE DATE OF FINAL RULE], Results of Acceptance Tests.

(30) RUS Form 506, issued 3–97, Statement of Engineering Fee—Telecommunications.

(31) RUS Form 515, issued September 17, 2001, Telecommunications Systems Construction Contract (Labor and Materials).

(32) RUS Form 526, issued 8–66, Construction Contract Amendment.

(33) RUS Form 527, issued 3–71, Statement of Construction, Telephone System ''Outside Plant''.

(34) RUS Form 553, issued 5–67, Check List for Review of Plans and Specifications.

(35) RUS Form 724, issued 10–63, Final Inventory, Telephone Construction Contract.

(36) RUS Form 724a, issued 4–61, Final Inventory, Telephone Construction—Telephone Construction Contract (Labor and Materials), columns 1–8.

(37) RUS Form 724b, issued 3–61, Final Inventory, Telephone Construction Contract (Labor and Materials), columns 9–14.

(38) RUS Form 771, issued 10–75, Summary of Work Orders (Inspected by RUS Field Engineer).

(39) RUS Form 771a, issued 10–75, Summary of Work Orders (Inspected by Licensed Engineer or Borrower's Staff Engineer).

(40) RUS Form 773, issued 12–90, Miscellaneous Construction Work and Maintenance Services Contract.

(41) RUS Form 787, issued 8–63, Supplement A to Construction Contract.

(42) RUS Form 817, issued 6–60, Final Inventory, Telephone Force Account Construction.

(43) RUS Form 817a, issued 6–60, Final Inventory, Telephone Force Account Construction, columns 1–8.

(44) RUS Form 817b, issued 6–60, Final Inventory, Telephone Force Account Construction, Columns 9–14.

(45) RUS Form 835, issued 3–66, Preloan Engineering Service Contract, Telephone System Design.

**§ 1755.97 [Amended]**

■ 21. Amend § 1755.97 by removing paragraphs (b)(1), (b)(2), (b)(4), (b)(6),and (b)(7) and redesignate (b)(3) as newly designated paragraph (b)(1), (b)(5) as newly designated paragraph (b)(2), (b)(8) as newly designated paragraph (b)(3), (b)(9) as newly designated paragraph (b)(4), (b)(10) as newly designated paragraph (b)(5), (b)(11) as newly designated paragraph (b)(6), (b)(12) as newly designated paragraph (b)(7), (b)(13) as newly designated paragraph (b)(8), (b)(14) as newly designated paragraph (b)(9), (b)(15) as newly designated paragraph (b)(10), (b)(16) as newly designated paragraph (b)(11), (b)(17) as newly designated paragraph (b)(12).

■ 22. Amend § 1755.200:

■ a. In paragraph (b)(1) by removing the word ''accepted'' and adding in its place ''compliant'';

■ b. In paragraph (c)(8)(i) by removing the word ''accepted'' and adding in its place ''compliant'';

■ c. In paragraph (c)(9) by removing the word ''acceptance'' and adding in its place ''compliance'';

■ d. In paragraph (c)(14)(i) and (c)(14)(ii) by removing the word ''accepted'' and adding in its place ''compliant'';

■ e. In paragraph (d)(7) by removing the word ''accepted'' and adding in its place ''compliant'';

■ f. In paragraph (e)(6)(ii) by removing the word ''accepted'' and adding in its place ''compliant'';

■ g. In paragraphs (g)(2)(i) and (g)(2)(ii)(A) by removing the word ''accepted'' and adding in its place ''compliant'',

■ h. By revising paragraph (g)(3), and

■ i. In paragraphs (g)(4)(i) and (ii) by removing the word ''accepted'' and adding in its place ''compliant,''.

The revisions read as follows:

**§ 1755.200 RUS standard for spicing copper and fiber optic cables.**

* * * * *

(g) * * *

(3) Buried service wire shield bond connections. Buried service wire shields shall be connected to the pedestal bonding and grounding system. Typical buried service wire installations are shown in Figures 17 and 18. In addition to the methods referenced in Figures 17 and 18, the shields of buried service wires may also be connected to the pedestal bonding and grounding system using buried service wire bonding harnesses. When those harnesses are used they shall be installed in accordance with the manufacturer's instructions. Figures 17 and 18 are as follows:

* * * * *

■ 23. Amend § 1755.390 by:

■ a. Removing paragraphs (a)(4) and (a)(5) and redesignate paragraphs (a)(6) as newly designated paragraph (a)(4) and (a)(7) as the new paragraph (a)(5);;

■ b. By revising paragraph (f)(3)

■ c. By revising paragraph (h)(3)

■ d. Removing paragraphs (p) and (q) and redesignate paragraphs (r) as newly designated paragraph (p) and (s) as newly designated paragraph (q);

■ e. Revising newly redesignated paragraphs (q)(8) and (q)(9); and

■ f. Removing Appendix A.

The revisions read as follows:

**§ 1755.390 RUS specification for filled telephone cables.**

* * * * *

(f) * * *

(3) The individual cable manufacturer must demonstrate that the filling compound selected for use is suitable for its intended application. The filling compound must be applied to the cable in such a manner that the cable components will not be degraded.

* * * * *

(h) * * *

(3) The individual cable manufacturer must demonstrate that the flooding compound selected for use is acceptable for the application.

* * * * *

(q) * * *

(8) When cable manufactured to the requirements of this section is shipped, both ends must be equipped with end caps acceptable to owner.

(9) When preconnectorized cables are shipped, the splicing modules must be protected to prevent damage during shipment and handling. The protection method must be acceptable to owner prior to its use.

* * * * *

■ 24. Amend § 1755.397 by:

■ a. Removing paragraph (b)(4) and redesignate paragraphs (b)(5) as newly designated paragraph (b)(4), (b)(6) as newly designated paragraph (b)(5), (b)(7) as newly designated paragraph (b)(6);

■ b. Revising newly redesignated paragraph (b)(5) by removing the word ''accepted'' and adding in its place ''compliant'';

■ c. Revising paragraph (j)(l)(ii);

■ d. Revising paragraph (k)(10)(vii) by removing the word ''accepted'' and adding in its place ''compliant'';

■ e. Removing paragraph (k)(10)(viii); and

■ f. Revising paragraph (q)(8)(ii).

The revisions read as follows:

**§ 1755.397 RUS performance specification for line concentrators.**

* * * * *

(j) * * *

(1) * * *

(ii) Equipment must pass laboratory tests, simulating a hostile electrical environment, before being placed in the field for the purpose of obtaining field experience. There are five basic types of laboratory tests which must be applied to exposed terminals in an effort to determine if the equipment will survive. Figure 2 of this section, Summary of Electrical Requirements and Tests, identifies the tests and their application as follows:

* * * * *

(q) * * *

(8) * * *

(ii) In the event that the measured data or operational tests show that equipment fails to meet the requirements of this section, the deficiencies are to be resolved as set forth in RUS Contract Form 395, Equipment Contract. (Copies are available from RUS, Room 0174, U.S. Department of Agriculture, Washington, DC 20250–1500.) The reports of the bidder and the owner shall be detailed as to deficiencies, causes, corrective action necessary, corrective action to be taken, completion time, etc.

* * * * *

**§ 1755.501 [Amended]**

■ 25. In § 1755.501 remove the definitions for ''RUS accepted (material and equipment)'' and ''RUS technically accepted (material and equipment)''.

■ 26. Amend § 1755.503 by revising paragraph (l) to read as follows:

**§ 1755.503 General**

* * * * *

(l) All materials such as service wires and cables, ground rods, ground rod clamps, etc., used in service entrance installations shall be RUS compliant. Borrowers shall require contractors to obtain the borrower's approval before non-domestic materials are to be used in service entrance installations. Borrowers shall also ensure that the cost of the non-domestic materials are at least 6 percent less than the cost of equivalent domestic materials, as specified in ''Buy American'' Requirement of the Rural Electrification Act of 1936, as amended (7 U.S.C. 903 note). Materials used in service entrance installations shall be of a suitable quality for their intended application as determined by the RUS borrower or the engineer delegated by the RUS borrower.

* * * * *

■ 27. Amend § 1755.505 by:

■ a. In paragraph (a) by removing the word ''accepted'' and adding in its place ''compliant'';

■ b. Revising paragraph (b); and

■ c. Revising paragraph (f)(12).

The revisions read as follows:

**§ 1755.505 Buried services.**

* * * * *

(b) Buried services of six or more pairs shall be RUS compliant 22 AWG filled buried cable conforming to the requirements of § 1755.390, RUS specification for filled telephone cables.

* * * * *

(f) * * *

(12) If the NID, BET, or fused primary station protector must be mounted inside (not recommended by RUS), the service entrance into the building shall be installed in accordance with section 800–12(c) of ANSI/NFPA 70–1999, NEC ®. After pulling-in the wire or cable, the free space around the cable or wire shall be carefully sealed both outside and inside with a duct sealer that is RUS compliant.

* * * * *

■ 28. Amend § 1755.506 by revising paragraph (a) to read as follows:

**§ 1755.506 Aerial wire services.**

(a) Aerial services of one through six pairs shall consist of Service Entrance Aerial (SEA) assembly units, in accordance with RUS Bulletin 1753F–153 (RUS Form 515d), Specifications and Drawings for Service Installations at Customer Access Locations. The wire used for aerial services shall conform to the requirements of §§ 1755.700 through 1755.704, RUS specification for aerial service wires, and shall be RUS compliant. Copies of RUS Bulletin 1753F–153 are available upon request from RUS/USDA, 1400 Independence Avenue SW., STOP 1522, Washington, DC 20250–1522, FAX (202) 720–4120.

* * * * *

■ 29. Amend § 1755.507 by:

■ a. Revising paragraph (a) by removing the phrase ''RUS accepted or RUS technically accepted'' and adding in its place ''RUS compliant''; and

■ b. Revising paragraph (c)(12).

The revisions read as follows:

**§ 1755.507 Aerial cable services.**

* * * * *

(c) * * *

(12) For the cable entrance, holes shall be bored slightly larger in diameter than the cable and shall slope upward from outside to inside. A duct sealer having RUS compliance shall be applied to both ends of the hole after the cable is pulled in.

* * * * *

**§ 1755.508 [Amended]**

■ 30. Amend § 1755.508 by:

■ a. Revising paragraph (c) by removing the phrase ''RUS accepted or RUS technically accepted'' and adding in its place ''RUS compliant'';

■ b. Revising paragraph (d) by removing the phrase ''RUS accepted or RUS technically accepted'' and adding in its place ''RUS compliant'';

■ c. Revising paragraph (e) by removing the phrase ''RUS accepted or RUS technically accepted'' and adding in its place ''RUS compliant'';

■ d. Revising paragraph (x) by removing the phrase ''RUS accepted or RUS technically accepted'' and adding in its place ''RUS compliant'';

■ e. Revising paragraph (aa) by removing the phrase ''RUS accepted or RUS technically accepted'' and adding in its place ''RUS compliant'';

■ f. Revising paragraph (dd)(4) by removing the phrase ''RUS accepted or RUS technically accepted'' and adding in its place ''RUS compliant'';

■ g. Revising paragraph (ee)(1) by removing the phrase ''RUS accepted or RUS technically accepted'' and adding in its place ''RUS compliant''; and

■ h. Revising paragraph (ee)(2) by removing the phrase ''RUS accepted or RUS technically accepted'' and adding in its place ''RUS compliant''.

**§ 1755.510 [Amended]**

■ 31. Amend § 1755.510 by removing paragraph (b) and redesignating paragraph (c) as newly designated paragraph (b).

■ 32. Amend § 1755.522 by:

■ a. Removing paragraphs (a)(10) and (a)(11) and redesignate paragraph (a)(12) as newly designated paragraph (a)(10);

■ b. Revising paragraph (c)(1) by removing the phrase ''RUS accepted system'' and adding in its place ''RUS compliant system'';

■ c. Revising paragraph (d)(4) by removing the phrase ''RUS accepted supplier'' and adding in its place ''RUS compliant supplier'';

■ d. Revising paragraph (e)(10) by removing the word ''RUS'' and adding in its place ''owner'';

■ e. Revising paragraph (f)(6)(iii) by removing the word ''accepted'' and adding in its place ''compliant'';

■ f. Revising paragraphs (s)(5) and (s)(5)(ii)(A);

■ g. Revising paragraphs (t)(6) and (t)(11);

■ h. Revising paragraph (y)(5)(iv), and

■ i. Revising Appendix D (8.2),

The revisions read as follows:

**§ 1755.522 RUS general specification for digital stored program controlled central office equipment.**

* * * * *

(s) * * *

(5) *Ringing generators.* Regardless of whether the ringing is generated on an ancillary basis or is generated integrally to the switching system, the ringing equipment shall meet the requirements of this section.

* * * * *

(ii) * * *

(A) The ringing generators shall have an output voltage which approximates a sine wave and, as a minimum, shall be suitable for ringing straight-line ringers. Although not a requirement, decimonic, synchromonic, or harmonic ringing may also be specified in appendix A of this section.

* * * * *

(t) * * *

(6) If specified in appendix A of this section, each protector group shall be furnished with a factory assembled tip cable for splicing to the entrance cable; the tip cable to be 20 feet (610 cm) in length unless otherwise specified. Factory assembled tip cable shall be #22 gauge. Tip cable requirements are provided in RUS Bulletin 345–87, PE–87, RUS Specification for Terminating (TIP) Cable. Cables having other kinds of insulation and jackets which have equivalent resistance to fire and which produce less smoke and toxic fumes may be used if specifically approved by owner.

* * * * *

(t)(11) Main frame protector makes and types shall be capable of easy removal.

* * * * *

(y) * * *

(5) * * *

(iv) Appendix D of this section shall be the principal single-point grounding system audit guideline document. A supplemental checklist may be prepared and provided by the switching system supplier which recognizes unique grounding requirements related to their particular switching system. The scope of this supplier checklist is to be confined to unique and specific switching system requirements only. Supplier supplemental grounding checklist must have prior approval of owner.

* * * * *

**APPENDIX D to 7 CFR 1755.522—ACCEPTANCE CHECKLIST—SINGLEPOINT GROUNDING SYSTEM**

* * * * *

8.2 Incoming cable pairs terminated on MDF protector assemblies should be protected with protector modules. These modules should contain white coded carbon blocks or orange coded gas tube arrestors. (Refer to RUS TE&CM 810, Item 7.4.)

* * * * *

■ 33. Amend § 1755.701 by:

■ a. Revising paragraph (e); and

■ b. Revising paragraph (f) by removing the word ''RUS'' and adding in its place ''owner''

The revision reads as follows:

**§ 1755.701 Scope**

* * * * *

(e) All wires sold to RUS borrowers for projects involving RUS loan funds under §§ 1755.700 through 1755.704 must be RUS compliant. For wires manufactured to the specification of §§ 1755.700 through 1755.704, all design changes to a compliant design must be submitted for acceptance by the RUS borrower's engineer.

* * * * *

■ 34. Amend § 1755.702 by revising paragraph (b)(2) to read as follows:

**§ 1755.702 Copper coated steel reinforced (CCSR) aerial service wire.**

* * * * *

(b) * * *

(2) The raw materials shall be RUS compliant prior to their use.

* * * * *

■ 35. Amend § 1755.703 by:

■ a. Revising paragraphs (b)(6) and (e)(2) to read as follows:

**§ 1755.703 Nonmetallic reinforced (NMR) aerial service wire.**

* * * * *

(b) * * *

(6) Repairs to the conductor insulation during manufacture are permissible. The method of repair shall be RUS compliant prior to its use. The repaired insulation shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 3.2.3.3.

* * * * *

(e) * * *

(2) The jacket raw materials shall be RUS compliant prior to their use.

* * * * *

**§ 1755.704 [Removed and Reserved]**

■ 36. Remove and reserve § 1755.704;

■ 37. Amend § 1755.860 by:

■ a. Revising paragraphs (a)(3) and (a)(4);

■ b. Revising paragraphs (b)(3), (b)(7)(i), and (b)(8);

■ c. Removing paragraphs (b)(5)(iv) and (b)(12);

■ d. Revising paragraphs (c)(4) and (c)(5);

■ e. Revising paragraph (e)(6);

■ f. Revising paragraph (h)(3);

■ g. Revising paragraphs (l)(4) and (l)(8);

■ h. Removing paragraphs (o), (p), (q), and redesignate paragraph (r) as newly designated paragraph (o);

■ i. Revising paragraphs (r)(3) and (r)(7) by removing the term ''RUS'' and adding in its place '' the purchaser''.

■ j. Removing APPENDIX A to § 1755.860—QUALIFICATION TEST METHODS and redesignate APPENDICES B as newly designated APPENDIX A -to § 1755.860—Sheath Slitting Cord Qualification and APPENDIX C as newly designated APPENDIX B —Thermal Reel Wrap Qualification; and

■ k. Revising new APPENDIX B to § 1755.860(III)(8).

The revisions read as follows:

**§ 1755.860 RUS specification for filled buried wires.**

(a) * * *

(3) All wires sold to RUS borrowers for projects involving RUS loan funds under this section must be RUS compliant. For wires manufactured to the specification of this section, all design changes to a compliant design must be accepted by the RUS borrower's engineer.

(4) Materials, manufacturing techniques, or wire designs not specifically addressed by this section may be allowed if RUS compliant. Justification for acceptance of modified materials, manufacturing techniques, or wire designs must be provided to substantiate product utility and long term stability and endurance.

* * * * *

(b) * * *

(3) Joints made in conductors during the manufacturing process may be brazed, using a silver alloy solder and nonacid flux, or they may be welded using either an electrical or cold welding technique. In joints made in uninsulated conductors, the two conductor ends must be butted. Splices made in insulated conductors need not be butted but may be joined in a manner acceptable to the RUS borrower's engineer.

* * * * *

(7) * * *

(i) All insulated conductors must be continuously tested for insulation faults during the twinning operation with the method of test acceptable to the RUS borrower's engineer. The length count and number of faults must be recorded. The information must be retained for a period of 6 months and be available for review by the RUS borrower's engineer when requested.

* * * * *

(8) Repairs to the conductor insulation during manufacturing are permissible. The method of repair must be accepted by the RUS borrower's engineer prior to its use. The repaired insulation must be capable of meeting the relevant electrical requirements of this section.

* * * * *

(c) * * *

(4) Positive identification of the tip and ring conductors of each pair by marking each conductor of a pair with the color of its mate is permissible. The method of marking must be accepted by the RUS borrower's engineers prior to its use.

(5) Other methods of providing positive identification of the tip and ring conductors of each pair may be employed if accepted by the RUS borrower's engineers prior to its use.

* * * * *

(e) * * *

(6) The individual wire manufacturer must have satisfactory performance

results that the filling compound selected for use is suitable for its intended application. The filling compound must be compatible with the wire components when tested in accordance with ASTM D 4568–86 at a temperature of 80 °C.

* * * * *

(h) * * *

(3) The individual wire manufacturer must have satisfactory performance results that the flooding compound selected for use is acceptable for the application.

* * * * *

(l) * * *

(4) An alternative method of marking may be used if accepted by the RUS borrower's engineer prior to its use.

* * * * *

(8) The method of marking must be by means of suitable surface markings producing a clear, distinguishable, contrasting marking acceptable to the RUS borrower's engineer. Where direct or transverse printing is employed, the characters should be indented to produce greater durability of marking. Any other method of length marking must be acceptable to the RUS borrower's engineer as producing a marker suitable for the field. Size, shape and spacing of numbers, durability, and overall legibility of the marker will be considered in acceptance of the method.

* * * * *

**Appendix B to § 1755.860—Thermal Reel Wrap Qualification**

* * * * *

(III) * * *

(8) For the thermal reel wrap to be RUS compliant, the temperature differences between the jacket with the thermal reel wrap and the jacket without the reel wrap must be greater than or equal to 17 °C.

* * * * *

■ 38. Amend § 1755.870 by:

■ a. Removing paragraphs (a)(3) and (a)(4) and redesignate paragraphs (a)(5) as newly designated paragraph (a)(3), (a)(6) as newly designated paragraph (a)(4), (a)(7) as newly designated paragraph (a)(5), (a)(8) as newly designated paragraph (a)(6);

■ b. Revising paragraph (b)(2) by removing the term ''RUS'' and adding in its place ''the RUS borrower's engineer'';

■ c. Removing paragraph (b)(5)(v);

■ d. Revising paragraph (b)(8)(iv) by removing the term ''RUS'' and adding in its place ''the end user'';

■ e. Revising paragraph (b)(9) by adding the words ''the RUS borrower's engineer'' after the term RUS;

■ f. Removing paragraph (b)(13);

■ g. Revising paragraphs (c)(4) and (c)(5) by removing the term ''RUS'' and adding in its place ''the RUS borrower's engineer'';

■ h. Revising paragraph (f)(8)(ii) by removing the term ''RUS'' and adding in its place ''the RUS borrower's engineer'';

■ i. Revising paragraphs (k)(4) and (k)(8) by removing all references to the term ''RUS'' and replacing with the phrase ''the RUS borrower's engineer'';

■ j. Revising paragraph (l)(2),

■ k. Removing paragraphs (m) and (n) and redesignate paragraphs (o) as newly designated paragraph (m) and (p) as newly designated paragraph (n);

■ l. Revising paragraphs (o)(2), (o)(3), (o)(5), and (o)(8) by removing the term ''RUS'' and adding in its place ''the RUS borrower's engineer''; and

■ m. Removing APPENDIX A.

The revision reads as follows:

**§ 1755.870 RUS specification for terminating cables.**

* * * * *

(l) * * *

(2) The splicing modules shall meet the requirements of RUS Bulletin 345–54, PE–52, RUS Specification for Telephone Cable Splicing Connectors (Incorporated by Reference at § 1755.97), and be RUS compliant prior to their use.

* * * * *

■ 39. Amend § 1755.890 by:

■ a. Revising paragraph (a)(4),

■ b. Revising paragraph (a)(5) by removing the term ''RUS'' and adding in its place ''the RUS borrower's engineer'';

■ c. Revising paragraphs (b)(7)(i) and (b)(8) by removing the term ''RUS'' and adding in its place ''the RUS borrower's engineer'';

■ d. Revising paragraphs (c)(3) and (c)(4) by removing the term ''RUS'' and adding in its place ''the RUS borrower's engineer'';

■ e. Revising paragraph (f)(3) by removing the term ''RUS'' and adding in its place ''the RUS borrower's engineer'';

■ f. Revising paragraph (h)(3) by removing the term ''RUS'' and adding in its place ''the RUS borrower's engineer'';

■ g. Revising paragraph (i)(5) by removing the term ''RUS'' and adding in its place ''the RUS borrower's engineer'';

■ h. Revising paragraph (o)(2),

■ i. Removing paragraph (p);

■ k. Removing paragraph (q);

■ l. Revising paragraphs (s)(8) and (s)(9) and

■ m. Removing APPENDIX A.

The revisions read as follows:

**§ 1755.890 RUS specification for filled telephone cables with expanded insulation.**

(a) * * *

(4) All cables sold to RUS borrowers for projects involving RUS loan funds under this section must be accepted by the RUS borrower's engineer. For cables manufactured to the specification of this section, all design changes to an accepted design must be submitted for acceptance. The RUS borrower's engineer will be the sole authority on what constitutes a design change.

* * * * *

(o) * * *

(2) The splicing modules must meet the requirements of RUS Bulletin 345–54, PE–52, RUS Specification for Telephone Cable Splicing Connectors (Incorporated by Reference at § 1755.97), and be RUS compliant prior to their use.

* * * * *

(s) * * *

(8) When cable manufactured to the requirements of this specification is shipped, both ends must be equipped with end caps acceptable to the RUS borrower's engineer.

(9) When preconnectorized cables are shipped, the splicing modules must be protected to prevent damage during shipment and handling. The protection method must be acceptable to the RUS borrower's engineer prior to its use.

* * * * *

**§ 1755.900 [Amended]**

■ 40. Amend § 1755.900 by:

■ a. Removing paragraph (b)(1) and redesignate paragraphs (b)(2) as newly designated paragraph (b)(1), (b)(3) as newly designated paragraph (b)(2), (b)(4) as newly designated paragraph (b)(3), (b)(5) as newly designated paragraph (b)(4), (b)(6) as newly designated paragraph (b)(5), (b)(7) as newly designated paragraph (b)(6), (b)(8) as newly designated paragraph (b)(7), (b)(9) as newly designated paragraph (b)(8), (b)(10) as newly designated paragraph (b)(9), (b)(11) as newly designated paragraph (b)(10), (b)(12) as newly designated paragraph (b)(11), (b)(13) as newly designated paragraph (b)(12), (b)(14) as newly designated paragraph (b)(13), (b)(16) as newly designated paragraph (b)(14), (b)(17) as newly designated paragraph (b)(15), (b)(18) as newly designated paragraph (b)(16), (b)(19) as newly designated paragraph (b)(17), (b)(20) as newly designated paragraph (b)(18), (b)(21) as newly designated paragraph (b)(19), (b)(22) as newly designated paragraph (b)(20), (b)(23) as newly designated paragraph (b)(21), (b)(24) as newly designated paragraph (b)(22), (b)(25) as newly designated paragraph (b)(23), (b)(26) as newly designated paragraph (b)(24), (b)(27) as newly designated paragraph (b)(25), (b)(28) as newly designated paragraph (b)(26), (b)(29) as newly designated paragraph (b)(27), (b)(30) as

newly designated paragraph (b)(28), (b)(31) as newly designated paragraph (b)(29), (b)(32) as newly designated paragraph (b)(30;

■ 41. Amend § 1755.902 by:

■ a. Revising paragraph (a)(8) by removing the word ''Agency'' and adding in its place ''RUS borrower's engineer'';

■ b. Revising paragraph (a)(9):

■ c. Revising paragraph (h)(3) by removing the word ''Agency'' and adding in its place ''RUS borrower's engineer'';

■ d. Revising paragraph (i)(3) by removing the word ''Agency'' and adding in its place ''RUS borrower's engineer'';

■ e. Revising paragraph (s)(2),

■ f. Removing paragraph (t);

■ g. Removing paragraph (u); and

■ h. Removing Appendix to § 1755.902

.

The revisions read as follows:

* * * * *

**§ 1755.902 Minimum performance specification for fiber optic cable**

(a) * * *

(9) All cables sold to RUS telecommunications borrowers for projects involving RUS loan funds must be accepted by the RUS borrower's engineer.

* * * * *

(s) * * *

(2) All connectors must be accepted by the RUS borrower's engineer prior to their use.

* * * * *

■ 42. Amend § 1755.903 by:

■ a. Revising paragraphs (a)(4) and (a)(9);

■ b. Revising paragraph (g)(3) by removing the word ''Agency'' and adding in its place ''RUS borrower's engineer'';

■ c. Revising paragraph (q)(2),

■ d. Removing paragraph (r); and

■ e. Removing paragraph (s).

The revisions read as follows:

**§ 1755.903 Fiber optic service entrance cables**

(a) * * *

(4) Optical cable designs not specifically addressed by this section may be allowed. Justification for acceptance of a modified design must be provided to substantiate product utility and long term stability and endurance.

* * * * *

(9) All cables sold to RUS Telecommunications borrowers must be RUS compliant for projects involving RUS loan funds. All design changes to Agency compliant designs must be submitted to the RUS borrower's engineer for compliance. Optical cable designs not specifically addressed by this section may be allowed, if accepted by the RUS borrower's engineer. Justification for acceptance of a modified design must be provided to substantiate product utility and long term stability and endurance.

* * * * *

(q) * * *

(2) All connectors must be accepted by the RUS borrower's engineer prior to their use.

* * * * *

■ 43. Amend § 1755.910 by:

■ a. Revising paragraph (a)(3);

■ b. Removing paragraph (c)(3);

■ c. Revising paragraphs (d)(1)(ii) and (d)(2)(vi);

■ d. Revising paragraphs (d)(3)(xx) and (d)(3)(xxvii) by removing the word ''accepted'' and adding in its place ''compliant'',

■ e. Revising paragraphs (d)(4)(iv), (d)(5)(iii) and (d)(5)(x) by removing the word ''RUS'' and adding in its place ''the RUS borrower's engineer'',

■ f. Revising paragraphs (d)(6)(v) by removing the word ''acceptance'' and adding in its place ''compliance''; and

■ g. Revising paragraphs (e)(3)(xii)(A)(1), (e)(3)(xii)(B)(1), (e)(4)((viii)(A) and (e)(6)(v).

The revisions read as follows:

**§ 1755.910 RUS specification for outside plant housings and serving area interface system.**

(a) * * *

(3) The test procedures described in this section are required by RUS to demonstrate the functional reliability of the product. However, other standard or unique test procedures may serve the same function. In such cases, the RUS borrower's engineer shall evaluate the test procedures and results on an individual basis.

* * * * *

(d) * * *

(1) * * *

(ii) Housings shall be of sufficient size to permit easily managed installation, operational, testing, and maintenance operations. The general shape of outside plant housings is usually comparable to that of a rectangular column or cylinder, with the shape of any particular housing being left to the manufacturer's discretion.

(2) * * *

(vi) **Note 1:** Additional sizes of splice cabinets shall be considered by the RUS borrower on a case-by-case basis.

* * * * *

(e) * * *

(3) * * *

(xii)(A)(1) **Note:** The procedures for housings with larger surface area will be evaluated by the RUS borrower's engineer on a case-by-case basis.

* * * * *

(B)(1) **Note:** The procedures for housings with larger surface areas will be evaluated by the RUS borrower's engineer on a case-by-case basis.

* * * * *

(4) * * *

(viii) * * *

(A) **Note:** Test procedures for housings with larger doors will be evaluated by the RUS borrower's engineer on a case-by-case basis.

* * * * *

(6) * * *

(v) Secondary finish evaluation. Evidence of secondary protection shall be required for RUS compliance. Typical secondary protection is galvanizing per ASTM A 526/A 526M–90 for steel surfaces.

* * * * *

Dated: November 21, 2013.

**John Charles Padalino,**

*Administrator, Rural Utilities Service.*

[FR Doc. 2014–01340 Filed 2–11–14; 8:45 am]

BILLING CODE P

## DEPARTMENT OF ENERGY

## 10 CFR Part 431

**[Docket No. EERE–2014–BT–STD–0005]**

**RIN 1904–AD15**

## Energy Conservation Program: Energy Conservation Standards for Residential Conventional Cooking Products

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Request for information (RFI) and notice of document availability.

**SUMMARY:** The U.S. Department of Energy (DOE) is initiating an effort to determine whether to amend the current energy conservation standards for residential conventional cooking products. According to the Energy Policy and Conservation Act's 6-year review requirement, DOE must publish a notice of proposed rulemaking to propose new standards for conventional electric cooking products or amended standards for conventional gas cooking products or a notice of determination that the existing standards do not need to be amended by February 26, 2015. This RFI seeks to solicit information from the public to help DOE determine whether new or amended standards for residential conventional cooking products would result in a significant

amount of additional energy savings and whether those standards would be technologically feasible and economically justified.

**DATES:** Written comments and information are requested on or before March 14, 2014.

**ADDRESSES:** Interested parties are encouraged to submit comments electronically. However, comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- Email to the following address: *ConventionalCookingProducts 2014STD0005@ee.doe.gov*. Include docket number EERE–2014–BT–STD–0005 and/or RIN 1904–AD15 in the subject line of the message. All comments should clearly identify the name, address, and, if appropriate, organization of the commenter.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, Request for Information for Residential Conventional Cooking Products, Docket No. EERE–2014–BT–STD–0005 and/or RIN 1904–AD15, 1000 Independence Avenue SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Sixth Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Please submit one signed paper original.

*Instructions:* All submissions received must include the agency name and docket number and/or RIN for this rulemaking. No telefacsimiles (faxes) will be accepted.

*Docket:* The docket is available for review at *www.regulations.gov*, including **Federal Register** notices, public meeting attendees' lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE–2014–BT–STD–0005*. This Web page contains a link to the docket for this notice on the *www.regulations.gov* Web site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information may be sent to John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1692. Email: *kitchen_ranges_and_ovens@ee.doe.gov*.

Mr. Ari Altman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6307. Email: *ari.altman@hq.doe.gov*.

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

### *A. Authority and Background*

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163, (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering major household appliances (collectively referred to as ''covered products''), including residential conventional cooking products. EPCA authorizes DOE to establish technologically feasible, economically justified energy conservation standards for covered products that would be likely to result in significant national energy savings. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

The National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, amended EPCA to establish prescriptive standards for gas cooking products, requiring gas ranges and ovens with an electrical supply cord that are manufactured on or after January 1, 1990, not to be equipped with a constant burning pilot light. NAECA also directed DOE to conduct two cycles of rulemakings to determine if more stringent or additional standards were justified for kitchen ranges and ovens. (42 U.S.C. 6295(h)(1)–(2))

DOE undertook the first cycle of these rulemakings and published a final rule on September 8, 1998, which found that no standards were justified for conventional electric cooking products at that time. In addition, partially due to the difficulty of conclusively demonstrating that elimination of standing pilots for conventional gas cooking products without an electrical supply cord was economically justified, DOE did not include amended standards for conventional gas cooking products in the final rule. 63 FR 48038. For the second cycle of rulemakings, DOE published a final rule on April 8, 2009 (hereafter the April 2009 Final Rule), amending the energy conservation standards for conventional cooking products to prohibit constant burning pilots for all gas cooking products (*i.e.,* gas cooking products both with or without an electrical supply cord) manufactured on or after April 9, 2012. DOE decided to not adopt energy conservation standards pertaining to the cooking efficiency of conventional electric cooking products because it determined that such standards would not be technologically feasible and economically justified at that time. 74 FR 16040, 16041–16044.[1]

EPCA also requires that, not later than 6 years after the issuance of a final rule establishing or amending a standard, DOE publish a NOPR proposing new standards or a notice of determination that the existing standards do not need to be amended. (42 U.S.C. 6295(m)(1)) Based on this provision, DOE must publish by March 31, 2015 either a NOPR proposing new standards for conventional electric cooking products

[1] As part of the April 2009 Final Rule, DOE decided not to adopt energy conservation standards pertaining to the cooking efficiency of microwave ovens. DOE also published a final rule on June 17, 2013 adopting energy conservation standards for microwave oven standby mode and off mode. 78 FR 36316. DOE is not considering energy conservation standards for microwave ovens as part of this rulemaking.

or amended standards for conventional gas cooking products [2] or a notice of determination that the existing standards do not need to be amended. Today's notice represents the initiation of the mandatory review process imposed by EPCA and seeks input from the public to assist DOE with its determination on whether new or amended standards pertaining to conventional cooking products are warranted. In making this determination, DOE must evaluate whether more new or amended standards would (1) yield a significant savings in energy use and (2) be both technologically feasible and economically justified. (42 U.S.C. 6295(o)(3)(B))

*B. Rulemaking Process*

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products. EPCA requires that any new or amended energy conservation standard be designed to achieve the maximum improvement in energy or water efficiency that is technologically feasible and economically justified. To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following:

1. The economic impact of the standard on the manufacturers and consumers of the affected products;
2. The savings in operating costs throughout the estimated average life of the product compared to any increases in the initial cost, or maintenance expense;
3. The total projected amount of energy and water (if applicable) savings likely to result directly from the imposition of the standard;
4. Any lessening of the utility or the performance of the products likely to result from the imposition of the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
6. The need for national energy and water conservation; and
7. Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

| EPCA requirement | Corresponding DOE analysis |
|---|---|
| Technological Feasibility | • Market and Technology Assessment.<br>• Screening Analysis.<br>• Engineering Analysis. |
| **Economic Justification** | |
| 1. Economic impact on manufacturers and consumers | • Manufacturer Impact Analysis.<br>• Life-Cycle Cost and Payback Period Analysis.<br>• Life-Cycle Cost Subgroup Analysis.<br>• Shipments Analysis.<br>• Markups for Product Price Determination. |
| 2. Lifetime operating cost savings compared to increased cost for the product. | • Energy and Water Use Determination.<br>• Life-Cycle Cost and Payback Period Analysis. |
| 3. Total projected energy savings | • Shipments Analysis.<br>• National Impact Analysis. |
| 4. Impact on utility or performance | • Screening Analysis.<br>• Engineering Analysis. |
| 5. Impact of any lessening of competition | • Manufacturer Impact Analysis. |
| 6. Need for national energy and water conservation | • Shipments Analysis.<br>• National Impact Analysis. |
| 7. Other factors the Secretary considers relevant | • Emissions Analysis.<br>• Utility Impact Analysis.<br>• Employment Impact Analysis.<br>• Monetization of Emission Reductions Benefits.<br>• Regulatory Impact Analysis. |

As detailed throughout this RFI, DOE is specifically publishing this notice as the first step in the analysis process and is specifically requesting input and data from interested parties to aid in the development of the technical analyses.

## II. Request for Information and Comments

In the next section, DOE has identified a variety of questions that DOE would like to receive input on to aid in the development of the technical and economic analyses regarding whether new standards for conventional electric cooking products or amended standards for conventional gas cooking products [3] may be warranted. In addition, DOE welcomes comments on other issues relevant to the conduct of this RFI that may not specifically be identified in this notice.

*A. Products Covered by This RFI*

DOE defines ''cooking products'' as consumer products that are used as the major household cooking appliances.

[2] As discussed in section 0.0, DOE is also tentatively planning to consider new energy conservation standards for commercial-style gas cooking products and residential-scale units with higher burner input rates, which were previously excluded from standards.

[3] As discussed in section 0.0, DOE is also tentatively planning to consider new energy conservation standards for commercial-style gas cooking products and residential-scale units with higher burner input rates, which were previously excluded from standards.

They are designed to cook or heat different types of food by one or more of the following sources of heat: gas, electricity, or microwave energy. Each product may consist of a horizontal cooking top containing one or more surface units and/or one or more heating compartments. They must be one of the following classes: conventional ranges, conventional cooking tops, conventional ovens, microwave ovens, microwave/conventional ranges and other cooking products. (10 CFR 430.2) As part of this RFI, DOE intends to address energy conservation standards for all conventional cooking products.

As part of the most recent standards rulemaking for conventional cooking products, DOE decided to exclude commercial-style residential gas cooking products from consideration of energy conservation standards due to a lack of available data for determining efficiency characteristics of those products. DOE considered commercial-style gas cooking tops to be those products that incorporate cooking tops with higher input rate burners (*i.e.,* greater than 14,000 British thermal units (Btu)/hour (h)) and heavy-duty grates that provide faster cooking and the ability to cook larger quantities of food in larger cooking vessels. DOE also stated that the burners are optimized for the larger-scale cookware to maintain high cooking performance. Similarly, DOE considered commercial-style gas ovens to have higher input rates (*i.e.,* greater than 22,500 Btu/h) and dimensions to accommodate larger cooking utensils or greater quantity of food items, as well as features to optimize cooking performance. 74 FR 16040, 16054 (Apr. 8, 2009); 72 FR 64432, 64444, 64445 (Nov. 15, 2007). As discussed in section II.B, DOE also stated in the previous standards rulemaking that the current DOE cooking products test procedures may not adequately measure performance of commercial-style gas cooking tops and ovens. 72 FR 64432, 64444, 64445 (Nov. 15, 2007).

Based on DOE's review of residential gas cooking products available on the market, DOE noted that there are a significant number of models advertised as commercial-style (or in some cases ''professional-style'') with the features described above.[4] In particular, DOE noted that commercial-style gas cooking tops and ranges have multiple surface burners rated above 14,000 Btu/h and the ''heavy-duty'' grates are consistently made of cast iron. DOE also noted that the number of burners ranged from four to eight for commercial-style gas cooking tops and ranges versus four to five burners for residential-scale products. Additionally, these commercial-style gas cooking tops and ranges may be reconfigurable, for example with the option to replace burners with griddles or grills.

DOE does note that a number of residential gas cooking products that manufacturers do not advertise as commercial-style have a single surface burner rated above 14,000 Btu/h, which may be labeled in product literature as specifically intended for rapid boiling. Products with only one high-Btu/h burner also have cast-iron grates, suggesting that ''heavy-duty grates'' are related to the input rate of the burner but are not a feature unique to products advertised as commercial-style.

DOE also observed differences in oven capacity during a review of residential cooking products. According to DOE's research, the oven capacity in typical residential ovens and ranges varies from 2.5 cubic feet to 5.0 cubic feet, while commercial-style gas ovens and ranges typically have oven capacities ranging from 3.0 cubic feet to 6.0 cubic feet. Of the reviewed commercial-style ranges, most had gas oven capacities between 5.0 and 6.0 cubic feet.

As part of this RFI, DOE tentatively plans to consider energy conservation standards for all residential conventional cooking products, including commercial-style gas cooking products and residential-scale units with higher burner input rates. As discussed in the sections below, DOE may consider developing test procedures for these products and determine whether separate product classes are warranted.

DOE notes that the test procedures for conventional ranges, cooking tops, and ovens found at 10 CFR part 430, subpart B, appendix I, do not address all possible types of combined cooking products (*i.e.,* products that combine a conventional cooking product with other appliance functionality, which may or may not include another cooking product), such as microwave/conventional ovens or any other products that may combine a conventional cooking product with other appliance functionality that is not a conventional cooking product. Because test procedures are not available addressing products that combine a conventional cooking product with other appliance functionality that is not a conventional cooking product (*e.g.,* microwave/conventional ovens), DOE is not considering energy conservation standards for such products at this time.

*Issue A.1* DOE requests comment on the consideration of energy conservation standards for all residential conventional cooking products, including gas cooking products with higher input rates. DOE requests comment on a potential definition of commercial-style gas cooking products, in particular with respect to burner input rates, cooking top grate materials, cavity volume, or any other characteristics that may be specific to commercial-style gas cooking products. DOE also requests comment on the tentative determination to not consider energy conservation standards for combined cooking products that may combine a conventional cooking product with other appliance functionality that is not a conventional cooking product.

*B. Test Procedure*

DOE's test procedures for conventional ranges, cooking tops, and ovens are found at 10 CFR part 430, subpart B, appendix I. DOE first established the test procedures included in appendix I in a final rule published in the **Federal Register** on May 10, 1978. 43 FR 20108, 20120–20128. DOE revised its test procedure for cooking products to more accurately measure their efficiency and energy use, and published the revisions as a final rule in 1997. 62 FR 51976 (Oct. 3, 1997). These test procedure amendments included: (1) A reduction in the annual useful cooking energy;[5] (2) a reduction in the number of self-cleaning oven cycles per year; and (3) incorporation of portions of the International Electrotechnical Commission's (IEC) Standard 705–1988, ''Methods for measuring the performance of microwave ovens for household and similar purposes,'' and Amendment 2–1993 (IEC Standard 705) for the testing of microwave ovens. *Id.* The test procedure for conventional cooking products establishes provisions for determining estimated annual energy use, cooking efficiency (defined as the ratio of cooking energy output to cooking energy input), and energy factor (EF) (defined as the ratio of annual useful cooking energy output to total annual energy input). 10 CFR 430.23(i); 10 CFR part 430, subpart B, appendix I.

[4] DOE noted one manufacturer offers electric cooking products advertised as professional-style. However, the cooking elements have similar wattages and diameters to other residential cooking products not advertised as commercial-style. As a result, DOE is not considering a separate classification for conventional electric cooking tops or ovens. DOE considers commercial-style products to be commercial-style gas cooking products or the gas component of a dual-fuel-range.

[5] The annual useful cooking energy is the energy input to a cooking product that is transferred to the load being cooked and is used to relate the efficiency (energy factor) of the cooking product to the annual energy consumption.

DOE published a final rule on October 31, 2012, amending the test procedures for conventional cooking products (hereafter referred to as the October 2012 TP Final Rule), to incorporate by reference provisions from IEC Standard 62301 ''Household electrical appliances—Measurement of standby power'' (Second Edition) for the measurement of energy use in standby mode and off mode, and methodology for the measurement of fan-only mode energy use in the energy efficiency metrics. 77 FR 65942.

DOE also published a NOPR on January 30, 2013 (hereafter referred to as the January 2013 Induction TP NOPR), in which it proposed amendments to the cooking products test procedure to allow for testing the active mode energy consumption of induction cooking products; *i.e.,* conventional cooking tops and ranges equipped with induction heating technology for one or more surface units on the cooking top. The proposed test procedure would replace the aluminum test blocks currently specified for conventional cooking top testing with hybrid test blocks comprising two separate stacked pieces: A stainless steel alloy 430 base, which is compatible with the induction technology, and an aluminum body. The proposed hybrid test blocks would have the same outer diameters and heat capacities as the existing aluminum test blocks and would be used for testing all cooking tops being considered in this standards rulemaking, including both conventional and induction cooking tops. 78 FR 6232. This test procedure rulemaking is still in progress.

As discussed in section II., DOE tentatively plans to consider energy conservation standards for all residential conventional cooking products, including commercial-style gas cooking products and residential-scale gas cooking products with higher burner input rates. As part of the previous energy conservation standards rulemaking, DOE noted that the test procedure for gas cooking tops is currently based on measuring temperature rise in an aluminum block with a single diameter for all burner input rates. DOE stated that the diameter of the test block is sufficient to measure higher-output residential-scale burners. For commercial-style burners that may have larger diameter burner rings to accomplish complete combustion, however, DOE noted that this test block diameter may be too small to achieve proper heat transfer and may not be representative of the dimensions of suitable cookware. DOE further stated that it was not aware of any data to determine the measurement of energy efficiency or energy efficiency characteristics for those products. 72 FR 64432, 64444 (Nov. 15, 2007). DOE also noted that the test procedure may not adequately measure performance of commercial-style gas ovens. DOE stated that the single test block may not adequately measure the temperature distribution that is inherent with the larger cavity volumes and higher input rates typically found in these products. DOE stated that it was not aware of any data upon which to determine the measurement of energy efficiency or energy efficiency characteristics for commercial-style gas ovens, so it therefore decided to exclude commercial-style gas cooking products from consideration of energy conservation standards. 72 FR 64432, 64445 (Nov. 15, 2007). Because DOE is tentatively planning to consider energy conservation standards for commercial-style gas cooking products and residential-scale units with higher burner input rates for this rulemaking, DOE may consider amending the cooking products test procedure in 10 CFR part 430, subpart B, appendix I to include methods for measuring the energy use of commercial-style gas cooking products and residential-scale gas cooking products with higher burner input rates.

DOE plans to consider the test procedure amendments adopted in the October 2012 TP Final Rule and the proposed amendments in the January 2013 Induction TP NOPR as part of this rulemaking. DOE also plans to consider any additional test procedure amendments developed for commercial-style gas cooking products and residential-scale gas cooking products with higher burner input rates.

*Issue B.1* DOE requests comment on appropriate test methods for measuring the energy consumption of commercial-style gas cooking products and residential-scale gas cooking products with higher burner input rates. In particular, DOE requests comment and data on the size of test blocks that would be representative of typical consumer use for these products.

*C. Market Assessment*

The market and technology assessment provides information about the residential conventional cooking products industry that will be used throughout the rulemaking process. For example, this information will be used to determine whether the existing product class structure requires modification based on the statutory criteria for setting such classes and to explore the potential for technological improvements in the design and manufacturing of such products. The Department uses qualitative and quantitative information to characterize the structure of the residential cooking products industry and market. DOE will identify and characterize the manufacturers of cooking products, estimate market shares and trends, address regulatory and non-regulatory initiatives intended to improve energy efficiency or reduce energy consumption, and explore the potential for technological improvements in the design and manufacturing of cooking products. DOE will also review product literature, industry publications, and company Web sites. Additionally, DOE will consider conducting interviews with manufacturers to assess the overall market for residential conventional cooking products.

Product Classes

The general criteria for separation into different classes include (1) type of energy used; (2) capacity; or (3) other performance-related features that justify the establishment of a separate energy conservation standard, considering the utility of the feature to the consumer and other factors deemed appropriate by the Secretary. (42 U.S.C. 6295(q))

During the previous energy conservation standards rulemaking for cooking products, DOE evaluated product classes for conventional cooking products based on energy source (*i.e.,* gas or electric) and the type of cooking (*i.e.,* cooking tops and ovens). These distinctions initially yielded four conventional cooking product classes: (1) Gas cooking tops; (2) electric cooking tops; (3) gas ovens; and (4) electric ovens. For electric cooking tops, DOE determined that the ease of cleaning smooth elements provides enhanced consumer utility over coil elements. Because smooth elements typically use more energy than coil elements, DOE defined two separate product classes for electric cooking tops. For both electric and gas ovens, DOE determined that the type of oven-cleaning system is a utility feature that affects performance. DOE found that standard ovens and ovens using a catalytic continuous-cleaning process use roughly the same amount of energy. On the other hand, self-cleaning ovens use a pyrolytic process that provides enhanced consumer utility with lower overall energy consumption as compared to either standard or catalytically lined ovens. DOE defined the following product classes in the technical support document (TSD) for

the April 2009 Final Rule (2009 TSD)[6] for the previous cooking products standards rulemaking:

- Gas cooking tops—conventional burners;
- Electric cooking tops—low or high wattage open (coil) elements;
- Electric cooking tops—smooth elements;
- Electric ovens—standard oven with or without a catalytic line;
- Electric ovens—self-clean oven;
- Gas ovens—standard oven with or without a catalytic line; and
- Gas ovens—self-clean oven.

For this rulemaking, DOE tentatively plans to maintain the product classes for conventional cooking products from the previous standards rulemaking, as presented above. As discussed below, DOE tentatively plans to consider induction heating as a technology option for electric smooth cooking tops rather than as a separate product class. DOE notes that induction heating provides the same basic function of cooking or heating food as heating by gas flame or electric resistance, and that the installation options available to consumers are also the same for both cooking products with induction and electric resistance heating. As discussed in section II.A, DOE is also planning to consider commercial-style gas cooking products and residential-scale gas cooking products with higher burner input rates as part of this rulemaking. As a result, DOE may consider whether separate product classes are warranted for these latter products.

*Issue C.1* DOE requests feedback on the proposed product classes and seeks information regarding other product classes it should consider for inclusion in its analysis. In particular, DOE requests comment on the determination to consider induction heating as a technology option rather than as a separate product class. In addition, DOE requests comment and data on whether commercial-style gas cooking products or residential-scale gas cooking products with higher burner input rates warrant product classes separate from residential-scale gas cooking products with lower burner input rates. If commenters believe that separate product classes are warranted, DOE requests comment as to how those classes should be configured, i.e., gas burner input rates, number of high input rate burners, cooking top grate materials, oven cavity volume, or some other criteria.

[6] Technical support document from the previous residential cooking products standards rulemaking is available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2006-STD-0127-0097.*

Technology Assessment

DOE uses information about existing and past technology options and prototype designs to help identify technologies that manufacturers could use to meet and/or exceed energy conservation standards. In consultation with interested parties, DOE intends to develop a list of technologies to consider in its analysis. Initially, this list will include a subset of the technology options considered during the most recent residential cooking products standards rulemaking that are considered to be technologically feasible. Based on a preliminary review of the cooking products market and information published in recent trade publications, technical reports, and manufacturer literature, DOE has observed that the results of the technology screening analysis performed during the previous rulemaking remain largely relevant for this rulemaking.

Based on the technologies identified in the previous standards rulemaking, DOE considered the technologies listed in Table II.1 for gas cooking tops. As part of the previous standards rulemaking, DOE considered electronic ignition as a technology option. However, because the previous standards rulemaking adopted standards to prohibit constant burning pilots for all gas cooking products manufactured on or after April 9, 2012 (74 FR 16040, 16041–44 (Apr. 8, 2009)), DOE considers electronic ignition part of the baseline design. As a result, DOE is not considering electronic ignition as a technology option for improving efficiency for this rulemaking. In addition, DOE's review of gas cooking tops suggests that all such products currently use electromechanical controls that do not consume power in a standby mode or off mode. As a result, DOE did not consider technology options for reducing standby mode or off mode energy consumption.

TABLE II.1—TECHNOLOGY OPTIONS FOR GAS COOKING TOPS

| |
|---|
| 1. Catalytic burners. |
| 2. Insulation. |
| 3. Radiant gas burners. |
| 4. Reduced excess air at burner. |
| 5. Reflective surfaces. |
| 6. Sealed burners. |
| 7. Thermostatically controlled burners. |

For open (coil) element electric cooking tops, DOE considered the technologies listed in Table II.2. DOE noted in the 2009 TSD that reflective surfaces and insulation yield very low energy savings. As with gas cooking tops, DOE's review of open (coil) element electric cooking tops suggests that all such products use electromechanical controls. As a result, DOE did not consider technology options for reducing standby mode or off mode energy consumption for electric cooking tops with open coils.

TABLE II.2—TECHNOLOGY OPTIONS FOR OPEN (COIL) ELEMENT ELECTRIC COOKING TOPS

| |
|---|
| 1. Electronic controls. |
| 2. Improved contact conductance. |
| 3. Insulation. |
| 4. Reflective surfaces. |

For smooth element electric cooking tops, DOE considered the technologies listed in Table II.3. In the 2009 TSD, DOE noted that it did not evaluate induction elements because the existing DOE test procedure cannot measure the possible energy savings from this technology. As discussed in section II.B, DOE published the January 2013 Induction TP NOPR to propose amendments to the cooking products test procedure to provide test methods for induction cooking products. As a result, DOE tentatively plans to consider induction elements as a technology option for smooth element electric cooking tops for this rulemaking.

TABLE II.3—TECHNOLOGY OPTIONS FOR SMOOTH ELEMENT ELECTRIC COOKING TOPS

| |
|---|
| 1. Electronic controls. |
| 2. Halogen elements. |
| 3. Induction elements. |
| 4. Low-standby-loss electronic controls. |

For gas and electric ovens, DOE considered the technologies listed in Table II.4 based on the previous standards rulemaking analysis. Because DOE's current energy conservation standards prohibit standing pilot lights for all gas cooking products, DOE did not consider pilotless ignition as a technology option. In the previous rulemaking, DOE considered electronic spark ignition as a technology option to replace electric glo-bar ignition for conventional gas standard ovens, but not for conventional gas self-clean ovens. For this RFI, DOE reviewed products available on the market, but did not observe any conventional gas self-clean ovens with electronic spark ignition. However, DOE is unaware of any design constraints that would prohibit the use of electronic spark ignition in conventional gas self-clean ovens. As a result, DOE is tentatively

planning to consider electronic spark ignition for all conventional gas ovens.

TABLE II.4—TECHNOLOGY OPTIONS FOR GAS AND ELECTRIC OVENS

| |
|---|
| 1. Bi-radiant oven (electric only). |
| 2. Electronic Spark Ignition (gas only). |
| 3. Forced convection. |
| 4. Halogen lamp oven (electric only). |
| 5. Improved and added insulation. |
| 6. Improved door seals. |
| 7. No oven-door window. |
| 8. Oven separator. |
| 9. Radiant burner (gas only). |
| 10. Reduced conduction losses. |
| 11. Reduced thermal mass. |
| 12. Reduced vent rate. |
| 13. Reflective surfaces. |
| 14. Steam cooking. |
| 15. Low-standby-loss electronic controls. |

*Issue C.2* DOE seeks information related to the efficiency improving technologies listed in Table II.4 or other unlisted technologies as to their applicability to the current market and how these technologies improve efficiency of residential conventional cooking products as measured according to the DOE test procedure. Additionally, DOE requests comment on the effects of the gas cooking products technology options on efficiency for commercial-style gas cooking products and gas cooking products with higher burner input rates.

*D. Engineering Analysis*

The engineering analysis estimates the cost-efficiency relationship of products at different levels of increased energy efficiency. This relationship serves as the basis for the cost-benefit calculations for consumers, manufacturers, and the nation. In determining the cost-efficiency relationship, DOE estimates the increase in manufacturer cost associated with increasing the efficiency of products above the baseline to the maximum technologically feasible (''max-tech'') efficiency level for each product class. The baseline model is used as a reference point for each product class in the engineering analysis and the life-cycle cost and payback-period analyses.

Baseline Models

For each established product class, DOE selects a baseline model as a reference point against which any changes resulting from energy conservation standards can be measured. The baseline model in each product class represents the characteristics of common or typical products in that class. Typically, a baseline model is one that meets the current minimum energy conservation standards.

In developing the baseline efficiency levels, DOE initially considered the current standards for conventional gas cooking products and the baseline efficiency levels for conventional electric cooking products from the previous standards rulemaking analysis. Since the last standards rulemaking, as discussed in section II.B, DOE amended the cooking products test procedures as part of the October 2012 TP Final Rule to include methods for measuring standby mode and off mode energy consumption and fan-only mode energy consumption for conventional cooking products. In addition, as part of the January 2013 Induction TP NOPR, DOE is proposing to amend the active mode test procedures for conventional cooking tops. DOE has developed tentative baseline efficiency levels considering these proposed and amended test procedures based on the integrated annual energy use metric combining active mode, standby mode, and off mode energy use.

For this RFI, DOE developed tentative baseline efficiency levels for gas and electric cooking tops considering energy use in different operating modes (*i.e.,* active mode, standby mode, and off mode) using the following methodology. DOE first considered the baseline active mode efficiency levels from the previous standards rulemaking analysis in the 2009 TSD. For gas cooking tops, DOE notes that the previous standards rulemaking adopted standards to prohibit constant burning pilots for products manufactured on or after April 9, 2012. 74 FR 16040, 16041–44 (Apr. 8, 2009). As a result, DOE considered the baseline efficiency level for gas cooking tops as the efficiency level corresponding to electronic ignition. Because DOE is proposing to amend the cooking products test procedure to replace the aluminum test blocks currently specified for conventional cooking top testing with hybrid test blocks (a stainless steel alloy 430 base and an aluminum body), DOE also considered the effects of these proposed test procedure amendments on the baseline active mode efficiency levels. Based on testing conducted for the January 2013 Induction TP NOPR,[7] the measured cooking efficiency using the proposed test block was on average 8.5 percent lower than the cooking efficiency using the current test block. 78 FR 6232, 6236, 6239 (Jan. 30, 2013). Based on this data, DOE scaled the active mode cooking efficiency in this rulemaking for all three cooking top product classes to account for the proposed test procedure amendments in the January 2013 Induction TP NOPR.

As discussed in section II.B, the October 2012 TP Final Rule amended the cooking products test procedure to provide methods for measuring conventional cooking product standby mode and off mode energy use, and created an integrated annual energy consumption (IAEC) metric combining standby mode and off mode energy consumption with the active mode energy consumption. 77 FR 65942. As a result, DOE considered the baseline energy use associated with standby mode and off mode for this RFI. DOE reviewed the gas cooking tops and electric open (coil) element cooking tops available on the market, noting that all of these products used electromechanical controls. As a result, DOE did not consider any additional energy consumption in standby mode or off mode for these two product classes. DOE observed that a large number of electric smooth element cooking tops on the market were equipped with electronic controls. DOE reviewed the cooking top standby test data presented in the microwave oven test procedure supplemental NOPR (SNOPR) that published on May 16, 2012 (77 FR 28805, 28811),[8] noting that the standby power for 4 models tested ranged from 0.6 watts (W) to 3.0 W, with an average of 1.9 W. DOE is considering the baseline standby power that was the highest standby power that DOE observed while providing full consumer utility, in this case 3.0 W, as part of the IAEC.

DOE is tentatively considering that it analyze the baseline IAEC levels for gas and electric cooking tops presented in Table II.5.

[7] As part of the induction cooking products test procedure rulemaking, DOE conducted testing with both the current and proposed test blocks for 3 different cooking tops with a total of 6 different surface heating elements.

[8] In the May 2012 microwave oven test procedure SNOPR, DOE considered test procedure amendments for measuring the standby mode and off mode energy consumption of combined cooking products and, as a result, presented standby power data for microwave ovens, conventional cooking tops, and conventional ovens.

TABLE II.5—CONVENTIONAL COOKING TOPS BASELINE EFFICIENCY LEVELS

| Product class | 2009 standards rulemaking | | Proposed test procedure cooking efficiency | Proposed IAEC |
|---|---|---|---|---|
| | Cooking efficiency | EF | | |
| Gas Cooking Tops | 0.399 | 0.399 | 0.365 | 1445.0 kBtu |
| Electric Cooking Tops—Low or High Wattage Open (Coil) Elements. | 0.737 | 0.737 | 0.674 | 256.7 kilowatt-hours (kWh). |
| Electric Cooking Tops—Smooth Elements | 0.742 | 0.742 | 0.679 | 280.6 kWh. |

For this RFI, DOE developed tentative baseline efficiency levels for gas and electric ovens considering energy use in different operating modes (*i.e.,* active mode, standby/off mode, and fan-only mode) using the following methodology. DOE first considered the baseline active mode efficiency from the previous standards rulemaking analysis in the 2009 TSD. As discussed above, the previous standards rulemaking adopted standards to prohibit constant burning pilots for all gas standard (*i.e.,* non-self-cleaning) ovens manufactured on or after April 9, 2012. As a result, DOE considered the baseline active mode efficiency level for gas standard ovens as the efficiency level corresponding to electronic ignition.

As discussed in section II.B, DOE amended the cooking products test procedure to include provisions for measuring standby mode and off mode energy consumption for conventional ovens. As a result, DOE considered the baseline energy use associated with standby mode and off mode for this RFI. Based on DOE's review of products available on the market, DOE observed a large number of ovens in all product classes that were equipped with electronic controls. DOE also notes that the units equipped with only electromechanical controls likely consume little to no energy in standby mode or off mode. For standby mode, DOE reviewed the test data presented in the May 2012 microwave oven test procedure SNOPR, noting that the standby power for 11 conventional oven models tested ranged from 1.1 W to 10.7 W, with an average of 3.4 W. 77 FR 28805, 28811 (May 16, 2012). DOE is tentatively considering the baseline standby power that was the highest standby power that DOE observed while providing full consumer utility, in this case 10.7 W.

In addition, as discussed in section II.B, DOE amended the cooking products test procedure to include provisions for measuring fan-only mode energy consumption for conventional ovens. Based on DOE's testing for the October 2012 TP Final Rule, DOE observed that ovens are normally capable of operating in fan-only mode. As a result, DOE considered the additional annual energy consumption in fan-only mode to develop the baseline efficiency levels. For fan-only mode, DOE presented data in a separate SNOPR for the conventional cooking products test procedure published on May 25, 2012 showing that the fan power ranged from 16 W to 50 W and that the duration of fan-only mode ranged from 10 minutes to 3.5 hours. 77 FR 31444, 31448. Using the highest fan-only mode power and duration that DOE observed, DOE estimated for this rulemaking a baseline per-cycle fan-only mode energy consumption of 0.175 kilowatt-hours (kWh) per cycle. DOE accounted for the fan-only mode energy consumption in the IAEC for each product class based on the per-cycle energy consumption and the number of annual cooking cycles.

DOE is tentatively considering that it analyze the baseline IAEC levels for conventional gas and electric ovens presented in Table II.6.

TABLE II.6—CONVENTIONAL OVENS BASELINE EFFICIENCY LEVELS

| Product class | 2009 Standards rulemaking | | Proposed IAEC |
|---|---|---|---|
| | EF | Annual energy consumption [9] | |
| Gas Oven—Standard Oven with or without a Catalytic Line | 0.0536 | 1656.7 kBtu | 2076.5 kBtu. |
| Gas Oven—Self-Clean Oven | 0.0540 | 1644.4 kBtu | 1965.0 kBtu. |
| Electric Oven—Standard Oven with or without a Catalytic Line | 0.1066 | 274.9 kWh | 370.0 kWh. |
| Electric Oven—Self-Clean Oven | 0.1099 | 266.6 kWh | 360.0 kWh. |

*Issue D.1* DOE requests comment on approaches that it should consider when determining the baseline efficiency levels for each product class, including information regarding the merits and/or limitations of such approaches.

*Issue D.2* DOE also requests additional test data to characterize the baseline efficiency levels for each product class. In particular, DOE requests additional standby mode and off mode data for each product class to characterize the baseline standby/off mode power levels. DOE also requests additional test data for conventional ovens regarding the energy use in fan-only mode. DOE requests additional test data for conventional cooking tops showing the difference in measured efficiency using the current test procedure and the test procedure proposed in the January 2013 Induction TP NOPR.

Higher Efficiency Levels

DOE will analyze each product class to determine the relevant trial standard levels (TSLs) and to develop

[9] DOE notes that the previous conventional cooking products test procedure in appendix I included the clock energy consumption. As a result, DOE subtracted the clock energy consumption before adding the standby and off mode energy consumption when considering integrated efficiency levels for this standards rulemaking.

incremental manufacturing cost data at each higher efficiency level. DOE tentatively plans to analyze the proposed efficiency levels based on the IAEC metric that accounts for the test procedure amendments adopted in the October 2012 TP Final Rule and the amendments proposed in the January 2013 Induction TP NOPR.

For gas and electric cooking tops, DOE plans to use the efficiency levels presented in the 2009 TSD, adjusted to account for the proposed and amended test procedures. DOE plans to consider an additional efficiency level for electric smooth cooking tops associated with changing conventional linear power supplies to switch-mode power supplies. DOE also notes that the Commission of the European Communities published Commission Regulation 1275/2008 on December 17, 2008 implementing Ecodesign requirements for standby and off mode electric power consumption for a specified list of energy using products, which includes the cooking products covered by this rulemaking. The Ecodesign regulation requires that any of these products manufactured after December 17, 2012, have a maximum standby power of 1 W. As a result, DOE considered an additional efficiency levels for electric smooth cooking tops associated with a 1–W standby power level. In addition, DOE considered an efficiency level for electric smooth cooking tops associated with induction technology. DOE based this efficiency level on the testing results presented in the January 2013 Induction TP NOPR that showed a 9.8 percent increase in cooking efficiency for induction cooking tops compared to conventional electric smooth cooking tops. 78 FR 6232, 6239 (Jan. 30, 2013). DOE ordered the efficiency levels based on the cost-effectiveness of the design options using data from the 2009 TSD and preliminary estimates for standby power design options. Table II.7 through Table II.9 present the proposed efficiency levels for gas and electric cooking tops. DOE may consider revisions to the order of efficiency levels as additional cost-efficiency data is made available.

TABLE II.7—EFFICIENCY LEVELS UNDER CONSIDERATION FOR GAS COOKING TOPS

| Level | Efficiency level source | 2009 standards rule-making | | Proposed test procedure cooking efficiency | Proposed IAEC (*kBtu*) |
|---|---|---|---|---|---|
| | | Cooking efficiency | EF | | |
| Baseline | 2009 TSD (Electronic Ignition) | 0.399 | 0.399 | 0.365 | 1445.0 |
| 1 | 2009 TSD Max-Tech (Sealed Burners) | 0.420 | 0.420 | 0.384 | 1372.7 |

TABLE II.8—EFFICIENCY LEVELS UNDER CONSIDERATION FOR OPEN (COIL) ELEMENT ELECTRIC COOKING TOPS

| Level | Efficiency level source | 2009 standards rule-making | | Proposed test procedure cooking efficiency | Proposed IAEC (*kBtu*) |
|---|---|---|---|---|---|
| | | Cooking efficiency | EF | | |
| Baseline | 2009 TSD (Baseline) | 0.737 | 0.737 | 0.674 | 256.7 |
| 1 | 2009 TSD (Improved Contact Conductance) | 0.769 | 0.769 | 0.704 | 246.0 |

TABLE II.9—EFFICIENCY LEVELS UNDER CONSIDERATION FOR SMOOTH ELEMENT ELECTRIC COOKING TOPS

| Level | Efficiency level source | 2009 standards rule-making | | Proposed test procedure cooking efficiency | Proposed IAEC (*kBtu*) |
|---|---|---|---|---|---|
| | | Cooking efficiency | EF | | |
| Baseline | 2009 TSD (Baseline) | 0.742 | 0.742 | 0.679 | 280.6 |
| 1 | Baseline + Switch-Mode Power Supply (SMPS) | 0.742 | 0.742 | 0.679 | 268.6 |
| 2 | Baseline + 1 W Standby | 0.742 | 0.742 | 0.679 | 263.5 |
| 3 | 2009 TSD (Halogen Lamp Element) + 1 W Standby | 0.753 | 0.753 | 0.689 | 259.8 |
| 4 | Induction + SMPS | ..... | ..... | 0.746 | 245.9 |
| 5 | Induction + 1 W Standby | ..... | ..... | 0.746 | 240.7 |

For gas and electric ovens, DOE again plans to use the efficiency levels presented in the 2009 TSD, adjusted to account for the proposed and amended test procedures. DOE plans to consider an additional efficiency level for all conventional oven product classes associated with changing the conventional linear power supplies to switch-mode power supplies. DOE also plans to consider an additional efficiency level for all conventional oven product classes based on the 1–W Ecodesign standby requirement discussed above. For gas self-clean ovens, DOE is also considering an additional efficiency level associated with changing the baseline electric glo-bar ignition to electronic spark ignition. DOE ordered the efficiency levels based on the cost-effectiveness of the design options using data from the 2009 TSD and preliminary estimates for standby power design options. Table II.10 through Table II.13 present the proposed efficiency levels for gas and electric ovens.

TABLE II.10—EFFICIENCY LEVELS UNDER CONSIDERATION FOR GAS OVENS—STANDARD OVENS WITH OR WITHOUT A CATALYTIC LINE

| Level | Efficiency level source | 2009 standards rulemaking | | Proposed IAEC (*kBtu*) |
|---|---|---|---|---|
| | | EF | Annual energy consumption (*kBtu*) | |
| Baseline | 2009 TSD (Electric Glo-bar Ignition) | 0.0536 | 1656.7 | 2076.5 |
| 1 | 2009 TSD (Electric Glo-bar Ignition) + SMPS | 0.0536 | 1656.7 | 1932.0 |
| 2 | 2009 TSD (Improved Insulation) + SMPS | 0.0566 | 1568.9 | 1844.2 |
| 3 | 2009 TSD (2 + Electronic Spark Ignition) + SMPS | 0.0616 | 1442.4 | 1717.7 |
| 4 | 2009 TSD (3 + Improved Door Seals) + SMPS | 0.0622 | 1427.3 | 1702.6 |
| 5 | 2009 TSD (4 + Reduced Vent Rate) + SMPS | 0.0625 | 1420.1 | 1695.4 |
| 6 | 2009 TSD (5 + Reduced Conduction Losses) + SMPS | 0.0630 | 1410.6 | 1685.9 |
| 7 | 2009 TSD (6 + Forced Convection) + SMPS | 0.0653 | 1360.7 | 1636.0 |
| 8 | 2009 TSD (7) + 1W Standby | 0.0653 | 1360.7 | 1499.1 |

TABLE II.11—EFFICIENCY LEVELS UNDER CONSIDERATION FOR GAS OVENS—SELF-CLEAN OVENS

| Level | Efficiency level source | 2009 standards rulemaking | | Proposed IAEC (*kBtu*) |
|---|---|---|---|---|
| | | EF | Annual energy consumption (*kBtu*) | |
| Baseline | 2009 TSD (Baseline) | 0.0540 | 1644.4 | 1965.0 |
| 1 | 2009 TSD (Baseline) + SMPS | 0.0540 | 1644.4 | 1820.5 |
| 2 | 2009 TSD (Forced Convection) + SMPS | 0.0625 | 1420.8 | 1596.9 |
| 3 | 2009 TSD (2) + Electronic Spark Ignition + SMPS | 0.0680 | 1306.3 | 1482.3 |
| 4 | 2009 TSD (3 + Improved Door Seals) + SMPS | 0.0685 | 1295.9 | 1472.0 |
| 5 | 2009 TSD (4 + Reduced Conduction Losses) + SMPS | 0.0687 | 1291.8 | 1467.8 |
| 6 | 2009 TSD (5) + 1 W Standby | 0.0687 | 1291.8 | 1330.9 |

TABLE II.12—EFFICIENCY LEVELS UNDER CONSIDERATION FOR ELECTRIC OVENS—STANDARDS OVENS WITH OR WITHOUT A CATALYTIC LINE

| Level | Efficiency level source | 2009 standards rulemaking | | Proposed IAEC (*kWh*) |
|---|---|---|---|---|
| | | EF | Annual energy consumption (*kWh*) | |
| Baseline | 2009 TSD (Baseline) | 0.1066 | 274.9 | 370.0 |
| 1 | 2009 TSD (Baseline) + SMPS | 0.1066 | 274.9 | 327.7 |
| 2 | 2009 TSD (Reduced Vent Rate) + SMPS | 0.1113 | 263.3 | 316.1 |
| 3 | 2009 TSD (2 + Improved Insulation) + SMPS | 0.1163 | 251.9 | 304.8 |
| 4 | 2009 TSD (3 + Improved Door Seals) + SMPS | 0.1181 | 248.1 | 300.9 |
| 5 | 2009 TSD (4 + Reduced Conduction Losses) + SMPS | 0.1184 | 247.5 | 300.3 |
| 6 | 2009 TSD (5 + Forced Convection) + SMPS | 0.1209 | 242.3 | 295.2 |
| 7 | 2009 TSD (6) + 1 W Standby | 0.1209 | 242.3 | 255.0 |

TABLE II.13—EFFICIENCY LEVELS UNDER CONSIDERATION FOR ELECTRIC OVENS—SELF-CLEAN OVENS

| Level | Efficiency level source | 2009 standards rulemaking | | Proposed IAEC (*kWh*) |
|---|---|---|---|---|
| | | EF | Annual energy consumption (*kWh*) | |
| Baseline | 2009 TSD (Baseline) | 0.1099 | 266.6 | 360.0 |
| 1 | 2009 TSD (Baseline) + SMPS | 0.1099 | 266.6 | 317.7 |
| 2 | 2009 TSD (Reduced Conduction Losses) + SMPS | 0.1102 | 265.9 | 317.0 |
| 3 | 2009 TSD (2 + Forced Convection) + SMPS | 0.1123 | 260.9 | 312.0 |
| 4 | 2009 TSD (3) + 1 W Standby | 0.1123 | 260.9 | 271.9 |

*Issue D.3* DOE seeks input concerning the efficiency levels it tentatively plans to use for each product class for collecting incremental cost data from manufacturers of residential cooking products. DOE also seeks input on appropriate maximum technologically feasible efficiency levels and the basis for why those levels should be selected.

*Issue D.4* DOE requests data on how the relative changes in efficiencies presented above for residential-scale gas cooking products would differ for commercial-style gas cooking products

and gas cooking products with higher burner input rates.

Approach for Determining the Cost-Efficiency Relationship

In order to create the cost-efficiency relationship, DOE intends to use a design-option approach, using reverse engineering (physical teardowns and testing of existing products in the market) to identify the incremental cost and efficiency improvement associated with each design option or design option combination.

DOE will analyze technologies and associated costs representative of baseline units as part of the reverse-engineering process. DOE intends to perform reverse engineering for each product class being analyzed. Whenever possible, DOE will attempt to reverse engineer test units that share similar platforms to better identify the efficiency benefits and costs of design options. As units are torn down, all design options used in them are noted and reviewed. Prior to tear down, DOE also plans to conduct limited testing to establish what control strategies are being used by manufacturers in conjunction with design options and platform design. Unit testing may include the measurement of disaggregated energy consumption to identify the relationship between particular components and control strategies taken by manufacturers to achieve higher efficiency levels. As part of the reverse-engineering process, DOE will attempt to generate a cost-efficiency relationship for each design option identified. In support of this design-option approach, DOE will consider cost-efficiency data from the 2009 TSD. DOE also requests incremental cost data for each cooking product design option. DOE intends the data to represent the average industry-wide incremental production cost for each technology.

To be useful in the manufacturer impact analysis, manufacturer cost information should reflect the variability in baseline models, design strategies, and cost structures that can exist among manufacturers. This information allows DOE to better understand the industry and its associated cost structure, and, thus, it helps predict the most likely impact that new energy efficiency regulations would have. For example, the reverse-engineering methodology allows DOE to estimate the ''green-field'' costs of building new facilities, yet the majority of plants in any given industry are comprised of a mix of assets in different stages of depreciation. Interviews with manufacturers not only help DOE refine its capital expenditure estimates, but they also allow DOE to refine depreciation and other financial parameters.

DOE will refine the cost-efficiency data it generates through the reverse-engineering activities with information obtained through follow-up manufacturer interviews and, as necessary, information contained in the market and technology assessment and further review of publicly available cost and performance information.

*Issue D.5* DOE requests feedback on using a design option approach supplemented with reverse engineering to determine the relationship between manufacturer cost and energy efficiency for residential cooking products.

*Issue D.6* DOE also requests incremental cost data for each cooking product design option. DOE intends the data to represent the average industry-wide incremental production cost for each technology. DOE also welcomes comment and data on how the incremental costs for residential-scale gas cooking products compare to those for commercial-style gas cooking products and gas cooking products with higher burner input rates.

EPCA also requires DOE to consider any lessening of the utility or the performance of a covered product likely to result from the imposition of a new standard. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) As part of its analysis of higher efficiency levels, DOE will consider whether new standards may impact the utility of residential cooking products.

*Issue D.7* DOE seeks comment on whether any new standards may impact the utility of cooking products. If such impacts exist, can the effects be quantified? If so, how?

*E. Markups Analysis*

To carry out the life-cycle cost (LCC) and payback period (PBP) calculations, DOE needs to determine the cost to the residential consumer of baseline products that satisfies the currently applicable standards, and the cost of the more-efficient unit the consumer would purchase under potential amended standards. By applying a multiplier called a ''markup'' to the manufacturer's selling price, DOE is able to estimate the residential consumer's price.

For the April 2009 Final Rule, DOE based the distribution channels on data from the Association of Home Appliance Manufacturers (AHAM). The *2005 Fact Book* (the latest available version from AHAM) shows that more than 93 percent of residential cooking products are sold through retail outlets. Because an overwhelming majority of products are sold through retail outlets, DOE assumed that all of the residential products are purchased by consumers from retail outlets. Thus, DOE analyzed a manufacturer-to-consumer distribution channel consisting of three parties: (1) The manufacturers producing the products; (2) the retailers purchasing the products from manufacturers and selling them to consumers; and (3) the consumers who purchase the products. DOE plans to use the same approach in the current rulemaking.

As was done in the last rulemaking and consistent with the approach followed for other energy consuming products, DOE will determine an average manufacturer markup by examining the annual Securities and Exchange Commission (SEC) 10–K reports filed by publicly traded manufacturers of appliances whose product range includes cooking products. DOE will determine an average retailer markup by analyzing both economic census data from the U.S. Census Bureau and the annual SEC 10–K reports filed by publicly traded retailers.

In addition to developing manufacturer and retailer markups, DOE will develop and include sales taxes to calculate appliance retail prices. DOE will use an Internet source, the Sales Tax Clearinghouse, to calculate applicable sales taxes.

*Issue E.1* DOE seeks input from stakeholders on whether the distribution channels described above are still relevant for kitchen ranges and ovens being considered in this rulemaking. DOE also welcomes comments concerning its proposed approach to developing estimates of markups reflecting future residential cooking products retail prices.

*F. Energy Use Analysis*

The purpose of the energy analysis is to assess the energy-savings potential of different product efficiencies. DOE uses the annual energy consumption and energy-savings potential in the LCC and PBP analyses to establish the savings in consumer operating costs at various product efficiency levels. As part of the energy use analysis, certain assumptions may be required regarding product application, including how the product is operated and under what conditions.

DOE's energy use analysis estimates the range of energy use of cooking products in the field, *i.e.,* as they are actually used by consumers. Because energy use by residential cooking products varies greatly based on consumer usage patterns, the Department will establish a range of energy use. The Energy Information Administration (EIA)'s *Residential*

*Energy Consumption Survey* (RECS) is one source for estimating the range of energy use for cooking products. DOE will use data from RECS 2009 for the current rulemaking.[10] From RECS, DOE will develop household samples for each product class. Although RECS does not provide the annual energy consumption of the cooking product, it does provide the frequency of cooking use. Thus, DOE can utilize the range in frequency of use to define the variability of the annual energy consumption.

For the April 2009 Final Rule, DOE utilized the 2004 *California Residential Appliance Saturation Study* (CA RASS) [11] and a Florida Solar Energy Center (FSEC) study [12] to establish representative annual energy use values for cooking products. The CA RASS and FSEC studies confirmed that annual cooking energy use has been consistently declining since the late 1970s. In the last rulemaking, DOE determined the average annual energy consumption for the various product classes as shown in Table II.14. DOE plans to update these values on the basis of most recent studies.

TABLE II.14—AVERAGE ANNUAL ENERGY CONSUMPTION BY PRODUCT CLASS

| Product class | EF | Annual energy consumption (*kWh/yr*) |
|---|---|---|
| Electric Open (Coil) Element Cooking Tops | 0.737 | 128.2. |
| Electric Smooth Element Cooking Tops | 0.742 | 128.2. |
| Gas Cooking Tops | 0.399 | 0.72 (MMBtu/yr). |
| Electric Ovens—Standard Ovens with or without a Catalytic Line | 0.1066 | 166.5. |
| Electric Ovens—Self-Clean | 0.1099 | 171.0. |
| Gas Ovens—Standard Ovens with or without a Catalytic Line | 0.0536 | 21.1* (and 0.84 MMBtu/yr). |
| Gas Ovens—Self-Clean | 0.0625 | 55.1* (and 0.73 MMBtu/yr). |

* Represents electrical energy use associated primarily with the ignition system.

DOE requests comment or seeks input from stakeholders on the following issues pertaining to the energy use analysis:

*Issue F.1* Approaches for specifying the typical annual energy consumption;

*Issue F.2* Data sources that DOE can use to characterize the variability in annual energy consumption for cooking products.

*G. Life-Cycle Cost and Payback Period Analysis*

The purpose of the LCC and PBP analysis is to analyze the effects of potential amended energy conservation standards on consumers of cooking products by determining how a potential amended standard affects their operating expenses (usually decreased) and their total installed costs (usually increased).

DOE intends to analyze the potential for variability and uncertainty by performing the LCC and PBP calculations on a representative sample of households from RECS for the considered product classes using Monte Carlo simulation and probability distributions. The analysis results are a distribution of 10,000 data points showing the range of LCC savings and PBPs for a given efficiency level relative to the baseline level. DOE intends to conduct the analysis for all seven product classes of residential cooking products—Gas Cooking tops with conventional burners, Electric Cooking tops (Open coil and Smooth elements), Electric Ovens (Standard with or without a catalytic line and self-clean), and Gas Ovens (Standard with or without a catalytic line and self-clean).

DOE expects to use single point values to characterize most components of the total installed cost, including the manufacturer markup and retailer markup. If, however, the manufacturer cost estimates developed in the engineering analysis are characterized using uncertainty or variability, DOE will use probability distributions to capture this uncertainty and variability.

DOE measures savings of potential standards relative to a base case that reflects conditions without new or amended standards. DOE will use efficiency market shares to characterize the base-case product mix. By accounting for consumers who already purchase more efficient products, DOE avoids overstating the potential benefits from potential standards.

*Issue G.1* DOE seeks stakeholder input on its proposed approach of using probability distributions and Monte Carlo simulation to conduct the LCC and PBP analysis.

Inputs to the LCC and PBP analysis are categorized as: (1) Inputs for establishing the purchase expense, otherwise known as the total installed cost, and (2) inputs for calculating the operating expense.

The primary inputs for establishing the total installed cost are the baseline consumer price, standard-level consumer price increases, and installation costs. Baseline consumer prices and standard-level consumer price increases will be determined by applying markups to manufacturer price estimates. The installation cost is added to the consumer price to arrive at a total installed cost. With regard to installation costs, unless the increased efficiency levels considered for this rulemaking result in significantly larger, heavier or functionally different products, DOE expects that more efficient cooking products will incur no increased installation costs.

*Issue G.2* DOE seeks input on whether it is correct to assume that changes in installation costs will be negligible for more-efficient products.

The primary inputs for calculating the operating costs are product energy consumption, product efficiency, electricity and gas prices and forecasts, maintenance and repair costs, product lifetime, and discount rates. Both product lifetime and discount rates are used to calculate the present value of future operating expenses.

Electricity and gas prices are used to calculate the annual cost savings at different efficiency levels. DOE plans to derive average monthly natural gas, and electricity prices for the 27 geographic areas used in RECS 2009 by using the

[10] *RECS 2009* is based on a sample of 12,083 households statistically selected to represent 113.6 million housing units in the United States. *RECS 2009* data are available for 27 geographical areas (including 16 large States) (Available at: *www.eia.gov/consumption/residential/*).

[11] California Energy Commission. *California Statewide Residential Appliance Saturation Study,* June 2004. Prepared for the California Energy Commission by KEMA–XENERGY, Itron, and RoperASW. Contract No. 400–04–009.

[12] Parker, D. S. ''Research Highlights from a Large Scale Residential Monitoring Study in a Hot Climate.'' Proceeding of International Symposium on Highly Efficient Use of Energy and Reduction of its Environmental Impact, January 2002. Japan Society for the Promotion of Science Research for the Future Program, Osaka, Japan. JPS–RFTF97P01002: pp. 108–116. Also published as FSEC–PF369–02, Florida Solar Energy Center, Cocoa, FL.

latest data from EIA and monthly energy price factors. DOE will develop the 27 regional energy prices based on the household population in each region. DOE will assign an appropriate price to each household in the RECS sample, depending on its location. To calculate annual electricity prices for residential consumers in each of the geographic areas, DOE will use information provided by electric utilities as summarized in the most recent EIA Form 861 data. To calculate annual natural gas prices, DOE will use data from EIA's Natural Gas Navigator, which includes monthly natural gas prices by State for residential consumers.

DOE will use projections of national average energy prices to residential consumers to estimate future energy prices. DOE will use the most recent available edition of EIA's Annual Energy Outlook (AEO) as the default source of projections for future energy prices.

*Issue G.3* DOE seeks stakeholder input on the proposed approaches for estimating current and future energy prices.

Maintenance costs are costs associated with maintaining the operation of the product. DOE will consider any expected changes to maintenance and repair costs for cooking products subject to new standards. Typically, small incremental changes in product efficiency incur little or no change in repair and maintenance costs over baseline products. Products having efficiencies that are significantly higher than the baseline are more likely to incur increased repair and maintenance costs, because such products are more likely to incorporate technologies that are not widely available. DOE will use input from manufacturers and other stakeholders to develop appropriate repair and maintenance cost estimates. DOE's current understanding is that changes in maintenance and repair costs will be negligible for more-efficient products.

*Issue G.4* DOE seeks stakeholder input on whether it is correct to assume that changes in maintenance and repair costs will be negligible for more-efficient products.

The product lifetime is the age at which a product is retired from service. In the past, DOE used information from various literature sources, such as *Appliance Magazine,* and input from manufacturers and other stakeholders to determine a range for the lifetime of residential cooking products. In the last rulemaking, DOE estimated an average product lifetime of 19 years for conventional gas and electric cooking products. DOE characterized the cooking top, and oven lifetimes with Weibull distributions.

For this rulemaking, DOE plans to use an approach that more accurately accounts for cooking product lifetimes in the field. It is based on an analysis of lifetime in the field using a combination of shipments data, the stock of appliances, and RECS data on the age of the appliances in the homes.[13] The method will allow DOE to estimate a survival function, which also provides an average and a median appliance lifetime. DOE plans to use recent data from RECS 2009, *American Housing Survey* for 2009 and 2011, and updated historical shipment data to develop product lifetimes.

*Issue G.5* DOE seeks stakeholder comments on the methodology proposed to determine product lifetimes for cooking products.

DOE uses a discount rate to determine the present value of lifetime operating expenses. For residential consumers of cooking products, DOE plans to estimate discount rates as the ''finance cost'' to purchase residential products. The finance cost of raising funds to purchase products can be interpreted as (1) the financial cost of any debt incurred to purchase products (principally interest charges on debt), or (2) the opportunity cost of funds used to purchase products (principally interest earnings on household equity). Much of the data required for determining the cost of debt and equity comes from the Federal Reserve Board's triennial *Survey of Consumer Finances.*[14]

DOE measures LCC and PBP impacts of potential standard levels relative to a base case that reflects the likely market in the absence of amended standards. DOE plans to develop market-share efficiency data (*i.e.,* the distribution of product shipments by efficiency) for the product classes DOE is considering, for the year in which compliance with any amended or new standards would be required.

*Issue G.6* DOE requests data on current efficiency market shares (of shipments) by product class, and also similar historic data, and expected trends in cooking products efficiency.

*H. Shipments Analysis*

DOE uses shipment projections by product class in its analysis of national impacts of potential standards as well as in the manufacturer impact analysis.

For the April 2009 Final Rule, DOE developed a shipments model for cooking products driven by historical shipments data. The historical shipments data are used not only to build up a product stock but also to calibrate the shipments model.

In the last rulemaking DOE utilized historical shipments information for cooking tops and ovens from three sources: (1) Data provided by AHAM for the period 2003–2005, (2) data from the *AHAM 2000 Fact Book* for the period 1989–2002,[15] and (3) data from *Appliance Magazine.*[16] For this rulemaking, DOE requests data on shipments from manufacturers. Additionally, DOE will also consider using other public sources of data, such as data from the NPD Group.

*Issue H.1* DOE seeks historical shipments data broken down by product class for cooking tops and ovens.

DOE plans to determine annual shipments in the base case by accounting for: (1) Replacements due to failure; and (2) cooking products purchases due to new home construction. In the last rulemaking, DOE included a third market segment for early replacements in order to calibrate the model. DOE will examine the applicability of this market segment in the shipments model for the current rulemaking. DOE plans to use new housing starts from the latest available edition of EIA's AEO in conjunction with appliance saturations to determine shipments to new construction. To determine replacement shipments, DOE will use the same product lifetimes and retirement functions that it generates for the LCC and PBP analyses.

*Issue H.2* DOE requests comment on the approach it intends on using to develop the shipments model and shipments forecasts for this rulemaking.

*I. National Impact Analysis*

The purpose of the national impact analysis (NIA) is to estimate aggregate impacts of potential efficiency standards at the national level. Impacts that DOE reports include the national energy savings (NES) from potential standards and the national NPV of the total consumer benefits. The NIA considers lifetime impacts of potential standards on products shipped in a 30-year period that begins with the expected compliance date for new or amended standards.

[13] Lutz, et al. ''Using National Survey Data to Estimate Lifetimes of Residential Appliances.'' October 2011. HVAC&R Research. (*www.tandfonline.com/doi/abs/10.1080/10789669.2011.558166#preview*)

[14] Available at *www.federalreserve.gov/econresdata/scf/scfindex.htm.*

[15] Association of Home Appliance Manufacturers, *AHAM 2000 Fact Book,* 2000. Washington, DC.

[16] Available for purchase at: *www.appliancemagazine.com.*

To develop the NES, DOE calculates annual energy consumption for the base case and each standards case. DOE calculates the annual energy consumption in each year using per-unit average annual energy use data multiplied by projected shipments.

To develop the national NPV of consumer benefits from potential standards, DOE calculates annual energy expenditures and annual product expenditures for the base case and the standards cases. DOE calculates total annual energy expenditures using data on annual energy consumption in each case, forecasted average annual energy prices, and shipment projections. The difference each year between energy bill savings and increased product expenditures is the net savings or net costs.

A key component of DOE's estimates of NES and NPV is the product energy efficiency forecasted over time for the base case and for each of the standards cases. To project a base-case shipment-weighted efficiency (SWEF) trend for each product class, DOE will consider recent trends in efficiency and input from stakeholders. To estimate the impact that standards have in the year compliance becomes required, in the April 2009 Final Rule, DOE used a ''roll-up'' scenario which assumes that product efficiencies in the base case that do not meet the standard level under consideration would ''roll up'' to meet the new standard level and product shipments at efficiencies above the standard level under consideration are not affected. DOE intends to use the same method for conducting the NIA for this rulemaking.

*Issue I.1* DOE seeks historical SWEF data for cooking products by product class. DOE also seeks historical market share data showing the percentages of product shipments by efficiency level.

*J. Submission of Comments*

DOE invites all interested parties to submit in writing by March 14, 2014, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of new or amended energy conservations standards for residential conventional cooking products. After the close of the comment period, DOE will begin collecting data, conducting the analyses, and reviewing the public comments, as needed. These actions will be taken to aid in the development of a NOPR for residential conventional cooking products if DOE decides to amend the standards for such products.

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via email at *Brenda.Edwards@ee.doe.gov*.

Issued in Washington, DC, on February 6, 2014.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2014–03086 Filed 2–11–14; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2014–0077; Directorate Identifier 2013–CE–021–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Air Tractor, Inc. Airplanes

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

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

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2010–17–18 R1, which applies to certain Air Tractor, Inc. Models AT–802 and AT–802A airplanes. AD 2010–17–18 R1 currently requires repetitively inspecting (using the eddy current method) the two outboard fastener holes in both of the wing main spar lower caps at the center splice joint for cracks; repairing or replacing any cracked spar; changing the safe life for certain serial number ranges; and sending the inspection results, only if cracks are found, to the FAA. Since we issued AD 2010–17–18 R1, we have determined that the safe life for the wing main spar lower caps should apply to all AT–802 and AT–802A airplanes regardless of configuration or operational use. This proposed AD would retain all actions of AD 2010–17–18 R1 and expand the applicability to include all serial numbers regardless of configuration or operational use. We are proposing this AD to correct the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by March 31, 2014.

**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 Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612; email: *airmail@airtractor.com;* Internet: *www.airtractor.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0077; 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:** Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@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–2014–0077; Directorate Identifier

2013–CE–021–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

**Discussion**

On December 16, 2010, we issued AD 2010–17–18 R1, Amendment 39–16552 (75 FR 82219, December 30, 2010) (''AD 2010–17–18 R1''), for certain Air Tractor Models AT–802 and AT–802A airplanes. AD 2010–17–18 R1 requires repetitively inspecting (using the eddy current method) the two outboard fastener holes in both of the wing main spar lower caps at the center splice joint for cracks; repairing or replacing any cracked spar; changing the safe life for certain serial number ranges; and sending the inspection results, only if cracks are found, to the FAA.

AD 2010–17–18 R1 resulted from our evaluation of a comment from David Ligon, Air Tractor, and our determination that we should reduce the applicability from that already required by AD 2010–17–18, Amendment 39–16412 (75 FR 52255, August 25, 2010) (''AD 2010–17–18''), because the safe life limit already existed through other regulatory methods for airplanes equipped for agricultural dispersal beginning with serial number (SN) –0270.

Therefore, the Applicability section of AD 2010–17–18 R1 was changed to SNs –0001 through –0269 that are certificated in any category and engaged in agricultural dispersal operations. AD 2010–17–18 R1 included those airplanes that had been converted from firefighting to agricultural dispersal or airplanes that convert between firefighting and agricultural dispersal, not equipped with the factory-supplied computerized fire gate P/N 80540 and not engaged in only full-time firefighting.

We issued AD 2010–17–18 R1 to detect and correct cracks in the wing main spar lower cap at the center splice joint, which could result in failure of the spar cap and lead to wing separation and loss of control.

**Actions Since AD 2010–17–18 R1 Was Issued**

Since we issued AD 2010–17–18 R1, we have further determined that we do not have sufficient information to show what, if any, fatigue development and crack growth differences there are between the different operating environments. Airplanes without agricultural dispersal equipment, used in such operations as firefighting and patrol, all share the same wing main spar design and may develop the same fatigue cracks that are addressed in AD 2010–17–18 R1. Since we do not have information to determine that the operating environments for the agricultural, firefighting, and patrol airplanes affect the wing fatigue life differently, we consider it appropriate to treat all Models AT–802 and AT–802A airplanes similar regardless of how the airplane is configured or operated.

**Relevant Service Information**

Snow Engineering Co. has not issued any new service information to address the issue of this proposed AD. We retain the incorporation by reference of all the service information incorporated into AD 2010–17–18 R1 into this proposed AD. That service information describes procedures for addressing the unsafe condition.

**FAA's Determination**

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**Proposed AD Requirements**

This proposed AD would retain all requirements of AD 2010–17–18 R1 and add airplanes to the Applicability section as previously discussed.

**Costs of Compliance**

We estimate that this proposed AD affects 154 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD. However, the only difference in the costs presented below and the costs associated with AD 2010–17–18 R1 is the proposed addition of 33 airplanes, from 121 to 154, and the corresponding costs associated with those 33 airplanes:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Eddy current inspection | $500 to $800 | Not Applicable | $500 to $800 | $77,000 to $123,200. |
| Spar cap replacement (two spars). | 495 work-hours × $85 per hour = $42,075. | $39,100 (two spars) | $81,175 | $12,500,950. |

We estimate the following costs to do any necessary repairs/modifications that would be required based on the results of the proposed inspections. We have no way of determining the number of aircraft that might need these repairs/modifications:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Center splice plate installation | 185 work-hours × $85 per hour = $15,725 | $4,300 | $20,025 |
| Extended splice block installation | 70 work-hours × $85 per hour = $5,950 | $3,200 | 9,150 |
| Cold-work lower spar cap fastener holes | 16 work-hours × $85 per hour = $1,360 | Not Applicable | 1,360 |

## Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120–0056. The paperwork cost associated with this proposed AD is detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2010–17–18 R1, Amendment 39–16552 (75 FR 82219, December 30, 2010), and adding the following new AD:

**Air Tractor, Inc.:** Docket No. FAA–2014–0077; Directorate Identifier 2013–CE–021–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by March 31, 2014.

**(b) Affected ADs**

This AD supersedes AD 2010–17–18 R1, Amendment 39–16552 (75 FR 82219, December 30, 2010) (''AD 2010–17–18 R1'').

**(c) Applicability**

This AD applies to Air Tractor, Inc. Models AT–802 and AT–802A airplanes, all serial numbers that are certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57: Wings.

**(e) Unsafe Condition**

This AD was prompted by our determination that there is a need to establish a safe life for the wing main spar lower caps on all airplanes regardless of configuration or operational use. We are issuing this AD to detect and correct cracks in the wing main spar lower cap at the center splice joint, which could result in failure of the spar cap and lead to wing separation and loss of control of the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified in paragraphs (g) through (l) of this AD, including all subparagraphs, unless already done (compliance with AD 2010–17–18 R1).

**(g) Actions for Airplanes Serial Numbers (SNs)—0001 Through –0091**

(1) Eddy current inspect the center splice joint outboard two fastener holes in both the left and right wing main spar lower caps for cracks at the compliance times specified in paragraphs (g)(1)(i) or (g)(1)(ii) of this AD. Do the inspections following Snow Engineering Co. Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002.

(i) *For airplanes previously affected by AD 2010–17–18 R1:* Initially inspect upon reaching 1,700 hours time-in-service (TIS) or within the next 50 hours TIS after April 21, 2006 (the effective date retained from AD 2006–08–09, Amendment 39–14565 (71 FR 27794, May 12, 2006)), whichever occurs later. Repetitively thereafter inspect at intervals not to exceed 800 hours TIS unless you installed the center splice plate and extended 8-bolt splice blocks before September 9, 2010 (the effective date retained from AD 2010–17–18, Amendment 39–16412 (75 FR 52255, August 25, 2010)) (''AD 2010–17–18''), then repetitively inspect following the compliance times in table 1 of paragraph (g)(5) of this AD.

(ii) *For airplanes not previously affected by AD 2010–17–18 R1:* Initially inspect upon reaching 1,700 hours TIS or within the next 50 hours TIS after the effective date of this AD, whichever occurs later. Repetitively thereafter inspect at intervals not to exceed 800 hours TIS unless you installed the center splice plate and extended 8-bolt splice blocks before the effective date of this AD, then repetitively inspect following the compliance times in table 2 of paragraph (g)(5) of this AD.

(2) If any cracks are found as a result of any inspection required in paragraph (g)(1) of this AD, before further flight after the inspection where a crack was found, do the actions specified in paragraphs (g)(2)(i) or (g)(2)(ii) of this AD. If you repair your airplane following paragraph (g)(2)(i) of this AD before the airplane reaches a total of 3,200 hours TIS, you must do the eddy current inspections following the compliance times in table 1 and table 2 of paragraph (g)(5) of this AD, as applicable. If you repair your airplane following paragraph (g)(2)(i) of this AD at 3,200 hours TIS or after, this repair terminates the repetitive inspections required in this AD.

(i) For cracks that can be removed by repair, install center splice plate, P/N 20997–2, and extended 8-bolt splice blocks, P/N 20985–1/-2; cold-work the lower spar cap fastener holes; and eddy current inspect the center splice joint outboard two fastener holes in both the left and right wing main spar lower caps for cracks. This eddy current inspection is required as part of the modification and is separate from the inspections required in paragraph (g)(1) of this AD. Incorporating this repair modification extends the safe life of the wing main spar lower cap to a total of 8,000 hours TIS. Do the repair following Snow Engineering Co. Service Letter #284, dated

October 4, 2009; Snow Engineering Co. Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002; Snow Engineering Co. Drawing Number 20995, Sheet 2, Rev. D., dated November 25, 2005; and Snow Engineering Co. Service Letter #240, dated September 30, 2004.

(ii) For cracks that cannot be repaired by incorporating the repair modification specified in paragraph (g)(2)(i) of this AD, replace the lower spar caps and associated parts listed following paragraph (g)(3) of this AD.

(3) Replace the wing main spar lower caps, the web plates, the center joint splice blocks and hardware, and the wing attach angles and hardware, and install the steel web splice plate at whichever of the compliance times specified in paragraphs (g)(3)(i), (g)(3)(ii), or (g)(3)(iii) of this AD that occurs first. If the wing main spar lower cap was replaced with P/N 21118–1/-2, the new spar safe life is 11,700 hours TIS. If the wing main spar lower cap was replaced with P/N 21083–1/–2 before September 9, 2010 (the effective date retained from AD 2010–17–18), the safe life for that P/N spar cap is 8,000 hours TIS until the wing main spar lower cap is replaced with P/N 21118–1/–2. This replacement terminates the inspections required in this AD. Do the replacement following Snow Engineering Co. Service Letter #284, dated October 4, 2009; Snow Engineering Co. Service Letter #80GG, revised December 21, 2005; and Snow Engineering Co. Drawing Number 20975, Sheet 4, Rev. A, dated January 7, 2009.

(i) *For all airplanes:* Before further flight when cracks are found that cannot be repaired by incorporating the repair modification specified in paragraph (g)(2)(i) of this AD.

(ii) *For airplanes previously affected by AD 2010–17–18 R1:* Before or when the airplane reaches the wing main spar lower cap safe life of a total of 4,100 hours TIS or within the next 50 hours TIS after September 9, 2010 (the effective date retained from AD 2010–17–18), whichever occurs later.

(iii) *For airplanes not previously affected by AD 2010–17–18 R1:* Before or when the airplane reaches the wing main spar lower cap safe life of a total of 4,100 hours TIS or within the next 50 hours TIS after the effective date of this AD, whichever occurs later.

(4) To extend the initial 4,100-hour TIS safe life of the wing main spar lower cap to a total of 8,000 hours TIS, you may incorporate the repair modification specified in paragraph (g)(2)(i) of this AD between 3,200 hours TIS and 4,100 hours TIS. This modification terminates the repetitive inspections required in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD, unless you do the modification before the airplane reaches a total of 3,200 hours TIS to repair cracks.

(5) If you modified your airplane to repair cracks before the airplane reached a total of 3,200 hours TIS, as required in paragraph (g)(2)(i) of this AD, or you previously modified your wing to extend the safe life but did not cold work the lower spar cap fastener holes, you must do the eddy current inspections required in paragraph (g)(1) of this AD following the compliance times specified in table 1 or table 2 of paragraph (g)(5) of this AD, as applicable.

TABLE 1 OF PARAGRAPH (g)(5)—MODIFIED AIRPLANES PREVIOUSLY AFFECTED BY AD 2010–17–18 R1 EDDY CURRENT INSPECTION COMPLIANCE TIMES

| Condition of the airplane | Initially inspect | Repetitively thereafter inspect at intervals not to exceed |
|---|---|---|
| (i) If the airplane already has the center splice plate and extended 8–bolt splice blocks installed at or after 3,200 hours TIS but the fastener holes have not been cold worked. You may cold work the fastener holes at any time to terminate the repetitive inspection requirements of this paragraph. | When the airplane reaches a total of 2,400 hours TIS after the modification or within the next 100 days after September 9, 2010 (the effective date retained from AD 2010–17–18), whichever occurs later. | 1,200 hours TIS until the 8,000 hours TIS spar replacement time. |
| (ii) Before reaching 3,200 hours TIS, the airplane had the center splice plate and extended 8-bolt splice blocks already installed but the fastener holes have not been cold worked. | When the airplane reaches a total of 2,400 hours TIS after the modification or within the next 100 days after September 9, 2010 (the effective date retained from AD 2010–17–18), whichever occurs later. | 1,200 hours TIS. Upon reaching 4,800 hours TIS after the modification, repetitively thereafter inspect at intervals not to exceed 600 hours TIS until the 8,000 hours TIS spar replacement time. |
| (iii) Before reaching 3,200 hours TIS, the airplane had the center splice plate and extended 8-bolt splice blocks installed and the fastener holes have been cold worked. | When the airplane reaches a total of 4,800 hours TIS after the modification or within the next 100 days after September 9, 2010 (the effective date retained from AD 2010–17–18), whichever occurs later. | 600 hours TIS until the 8,000 hours TIS spar replacement time. |

TABLE 2 OF PARAGRAPH (g)(5)—MODIFIED AIRPLANES NOT PREVIOUSLY AFFECTED BY AD 2010–17–18 R1 EDDY CURRENT INSPECTION COMPLIANCE TIMES

| Condition of the airplane | Initially inspect | Repetitively thereafter inspect at intervals not to exceed |
|---|---|---|
| (i) If the airplane already has the center splice plate and extended 8-bolt splice blocks installed at or after 3,200 hours TIS but the fastener holes have not been cold worked. You may cold work the fastener holes at any time to terminate the repetitive inspection requirements of this paragraph. | When the airplane reaches a total of 2,400 hours TIS after the modification or within the next 50 hours TIS after the effective date of this AD, whichever occurs later. | 1,200 hours TIS until the 8,000 hours TIS spar replacement time. |
| (ii) Before reaching 3,200 hours TIS, the airplane had the center splice plate and extended 8-bolt splice blocks already installed but the fastener holes have not been cold worked. | When the airplane reaches a total of 2,400 hours TIS after the modification or within the next 50 hours TIS after the effective date of this AD, whichever occurs later. | 1,200 hours TIS. Upon reaching 4,800 hours TIS after the modification, repetitively thereafter inspect at intervals not to exceed 600 hours TIS until the 8,000 hours TIS spar replacement time. |

TABLE 2 OF PARAGRAPH (g)(5)—MODIFIED AIRPLANES NOT PREVIOUSLY AFFECTED BY AD 2010–17–18 R1 EDDY CURRENT INSPECTION COMPLIANCE TIMES—Continued

| Condition of the airplane | Initially inspect | Repetitively thereafter inspect at intervals not to exceed |
|---|---|---|
| (iii) Before reaching 3,200 hours TIS, the airplane had the center splice plate and extended 8-bolt splice blocks installed and the fastener holes have been cold worked. | When the airplane reaches a total of 4,800 hours TIS after the modification or within the next 50 hours TIS after the effective date of this AD), whichever occurs later. | 600 hours TIS until the 8,000 hours TIS spar replacement time. |

(6) If you find any cracks during any inspection required by paragraph (g)(5) of this AD, before further flight, replace the lower spar caps and the associated parts following the procedures identified in paragraph (g)(3) of this AD.

**(h) Actions for Airplanes SNs –0092 Through –0101**

(1) Eddy current inspect the center splice joint outboard two fastener holes in both the left and right wing main spar lower caps for cracks at the compliance times specified in paragraphs (h)(1)(i) or (h)(1)(ii) of this AD. Do the inspections following Snow Engineering Co. Service Letter #284, dated October 4, 2009; and Snow Engineering Co. Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002.

(i) *For airplanes previously affected by AD 2010–17–18 R1:* Initially inspect upon reaching 1,700 hours TIS or within the next 50 hours TIS after September 9, 2010 (the effective date retained from AD 2010–17–18), whichever occurs later. Repetitively thereafter inspect at intervals not to exceed 800 hours TIS unless the center splice plate, P/N 20994–2, is installed, then repetitively inspect at intervals not to exceed 2,000 hours TIS.

(ii) *For airplanes not previously affected by AD 2010–17–18 R1:* Initially inspect upon reaching 1,700 hours TIS or within the next 50 hours TIS after the effective date of this AD, whichever occurs later. Repetitively thereafter inspect at intervals not to exceed 800 hours TIS unless the center splice plate, P/N 20994–2, is installed, then repetitively inspect at intervals not to exceed 2,000 hours TIS.

(2) If any cracks are found as a result of any inspection required by paragraph (h)(1) of this AD, before further flight after the inspection where a crack was found, do the actions specified in paragraphs (h)(2)(i) or (h)(2)(ii) of this AD.

(i) For cracks that can be removed by repair, install the 9-bolt splice blocks; cold-work the lower spar cap fastener holes; install the center splice plate, P/N 20994–2, if not already installed; and eddy current inspect the center splice joint outboard two fastener holes in both the left and right wing main spar lower caps for cracks. This eddy current inspection is required as part of the repair and is separate from the inspections required in paragraph (h)(1) of this AD. Incorporating this repair modification extends the safe life of the wing main spar lower cap to a total of 8,000 hours TIS and terminates the repetitive inspections required in this AD. Do the repair following Snow Engineering Co. Service Letter #284, dated October 4, 2009; Snow Engineering Co. Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002; Snow Engineering Co. Service Letter #281, dated August 1, 2009; and Snow Engineering Co. Drawing Number 20995, Sheet 3, dated November 25, 2005.

(ii) For cracks that cannot be repaired by incorporating the repair modification specified in paragraph (h)(2)(i) of this AD, replace the lower spar caps and associated parts listed following paragraph (h)(3) of this AD.

(3) Replace the wing main spar lower caps, the web plates, the center joint splice blocks and hardware, and the wing attach angles and hardware, and install the steel web splice plate at whichever of the compliance times specified in paragraphs (h)(3)(i), (h)(3)(ii), or (h)(3)(iii) of this AD that occurs first. If the wing main spar lower cap is replaced with P/N 21118–1/–2, the new spar safe life is 11,700 hours TIS. If the wing main spar lower cap was replaced with P/N 21083–1/–2 before September 9, 2010 (the effective date retained from AD 2010–17–18), the safe life for that P/N spar cap is 8,000 hours TIS until the wing main spar lower cap is replaced with P/N 21118–1/–2. This replacement terminates the inspections required in this AD. Do the replacement following Snow Engineering Co. Service Letter #284, dated October 4, 2009; Snow Engineering Co. Service Letter #80GG, revised December 21, 2005; and Snow Engineering Co. Drawing Number 20975, Sheet 4, Rev. A, dated January 7, 2009.

(i) *For all airplanes:* Before further flight when cracks are found that cannot be repaired by incorporating the modification specified in paragraph (h)(2)(i) of this AD.

(ii) *For airplanes previously affected by AD 2010–17–18 R1:* Before or when the airplane reaches the wing main spar lower cap safe life of a total of 4,100 hours TIS or within the next 50 hours TIS after September 9, 2010 (the effective date retained from AD 2010–17–18), whichever occurs later.

(iii) *For airplanes not previously affected by AD 2010–17–18 R1:* Before or when the airplane reaches the wing main spar lower cap safe life of a total of 4,100 hours TIS or within the next 50 hours TIS after the effective date of this AD, whichever occurs later.

(4) To extend the initial 4,100-hour TIS safe life of the wing main spar lower cap to a total of 8,000 hours TIS, before the airplane reaches a total of 4,100 hours TIS, as long as no cracks are found during any inspection required in paragraph (h)(1) of this AD, install center splice plate, P/N 20994–2, if not already installed as part of a repair; cold-work the lower spar cap fastener holes; and eddy current inspect the center splice joint outboard two fastener holes in both the left and right wing main spar lower caps for cracks. This eddy current inspection is required as part of the modification and is separate from the inspections required in paragraph (h)(1) of this AD. After installing P/N 20994–2, eddy current inspect the center splice joint outboard two fastener holes in both the left and right wing main spar lower caps for cracks repetitively at intervals not to exceed 2,000 hours TIS following the procedures specified in paragraph (h)(1) of this AD. Do the modification following Snow Engineering Co. Service Letter #284, dated October 4, 2009; Snow Engineering Co. Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002; Snow Engineering Co. Drawing Number 20975, Sheet 4, Rev. A., dated January 7, 2009; and Snow Engineering Co. Service Letter #245, dated April 25, 2005.

(i) *For airplanes previously affected by AD 2010–17–18 R1:* As of September 9, 2010 (the effective date retained from AD 2010–17–18), if you have already exceeded the 4,100-hour TIS threshold for extending the safe life to 8,000 hours TIS, you may be eligible for an alternative method of compliance following paragraph (o) in this AD.

(ii) *For airplanes not previously affected by AD 2010–17–18 R1:* As of the effective date of this AD, if you have already exceeded the 4,100-hour TIS threshold for extending the safe life to 8,000 hours TIS, you may be eligible for an alternative method of compliance following paragraph (o) in this AD.

(5) If any cracks are found as a result of the eddy current inspection required by paragraph (h)(4) of this AD, do the actions specified in paragraphs (h)(5)(i) or (h)(5)(ii) of this AD.

(i) For cracks that can be removed by repair, install the 9-bolt splice blocks, cold-work the lower spar cap fastener holes, and eddy current inspect the center splice joint outboard two fastener holes in both the left and right wing main spar lower caps for cracks. This eddy current inspection is required as part of the modification and is separate from the inspections required in paragraph (h)(1) of this AD. Incorporating this repair modification terminates the repetitive inspections required in paragraph (h)(4) of this AD. Do the repair following Snow Engineering Co. Service Letter #284, dated October 4, 2009; and Snow Engineering Co. Process Specification #197, page 1,

revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002; Snow Engineering Co. Service Letter #281, dated August 1, 2009; and Snow Engineering Co. Drawing Number 20995, Sheet 3, dated November 25, 2005.

(ii) For cracks that cannot be repaired by incorporating the repair modification specified in paragraph (h)(5)(i) of this AD, replace the lower spar caps and associated parts listed following paragraph (h)(3) of this AD.

**(i) Actions for Airplanes, SNs –0102 through –0178**

(1) Eddy current inspect the center splice joint outboard two fastener holes in both the left and right wing main spar lower caps for cracks at the compliance times specified in table 3 or table 4 of paragraph (i)(1) of this AD, as applicable. Do the inspections following Snow Engineering Co. Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002; Snow Engineering Co. Service Letter #245 dated April 25, 2005; Snow Engineering Co. Service Letter #284, dated October 4, 2009.

TABLE 3 OF PARAGRAPH (i)(1)—MODIFIED AIRPLANES PREVIOUSLY AFFECTED BY AD 2010–17–18 R1 EDDY CURRENT INSPECTION COMPLIANCE TIMES

| Condition of the airplane | Initially inspect | Repetitively thereafter inspect at intervals not to exceed |
|---|---|---|
| (i) If the center splice joint outboard two fastener holes in both the left and right wing main spar lower caps have not been cold worked. | When the airplane reaches a total of 5,500 hours TIS or within the next 50 hours TIS after September 9, 2010 (the effective date retained from AD 2010–17–18), whichever occurs later. | 1,100 hours TIS until the 8,000 hours TIS spar replacement time. |
| (ii) If the center splice joint outboard two fastener holes in both the left and right wing main spar lower caps have been cold worked. | When the airplane reaches a total of 5,500 hours TIS or within the next 50 hours TIS after September 9, 2010 (the effective date retained from AD 2010–17–18), whichever occurs later. | 2,200 hours TIS until the 8,000 hours TIS spar replacement time. |

TABLE 4 OF PARAGRAPH (i)(1)—MODIFIED AIRPLANES NOT PREVIOUSLY AFFECTED BY AD 2010–17–18 R1 EDDY CURRENT INSPECTION COMPLIANCE TIMES

| Condition of the airplane | Initially inspect | Repetitively thereafter inspect at intervals not to exceed |
|---|---|---|
| (i) If the center splice joint outboard two fastener holes in both the left and right wing main spar lower caps have not been cold worked. | When the airplane reaches a total of 5,500 hours TIS or within the next 50 hours TIS after the effective date of this AD, whichever occurs later. | 1,100 hours TIS until the 8,000 hours TIS spar replacement time. |
| (ii) If the center splice joint outboard two fastener holes in both the left and right wing main spar lower caps have been cold worked. | When the airplane reaches a total of 5,500 hours TIS or within the next 50 hours TIS after the effective date of this AD, whichever occurs later. | 2,200 hours TIS until the 8,000 hours TIS spar replacement time. |

(2) If no cracks are found during the initial inspections required in paragraph (i)(1) of this AD, to use the longer repetitive inspection intervals specified in table 3 and table 4 of paragraph (i)(1) of this AD, as applicable, you may do the optional cold-working of the lower spar cap fastener holes following Snow Engineering Co. Service Letter #245, dated April 25, 2005.

(3) If any cracks are found during any inspection required in paragraph (i)(1) of this AD, before further flight after the inspection where a crack is found, do the actions specified in paragraphs (i)(3)(i) or (i)(3)(ii) of this AD.

(i) For cracks that can be removed by repair, install the 9-bolt splice blocks, cold-work the lower spar cap fastener holes, and eddy current inspect the center splice joint outboard two fastener holes in both the left and right wing main spar lower caps for cracks. This eddy current inspection is required as part of the repair modification and is separate from the inspections required in paragraph (i)(1) of this AD. This modification terminates the repetitive inspections required in this AD. Do the repair following Snow Engineering Co. Service Letter #281, dated August 1, 2009; and Snow Engineering Co. Drawing Number 20995, Sheet 3, dated November 25, 2005.

(ii) For cracks that cannot be repaired by doing the actions specified in paragraph (i)(3)(i) of this AD, replace the lower spar caps and associated parts listed following paragraph (i)(4) of this AD, including all subparagraphs.

(4) Replace the wing main spar lower caps, the web plates, the center joint splice blocks and hardware, and the wing attach angles and hardware, and install the steel web splice plate at whichever of the compliance times specified in paragraphs (i)(4)(i), (i)(4)(ii), or (i)(4)(iii) of this AD that occurs first. This replacement terminates the inspections required in this AD, including all subparagraphs. After this replacement the new spar safe life is 11,700 hours TIS. Do the replacement following Snow Engineering Co. Service Letter #284, dated October 4, 2009; Snow Engineering Co. Service Letter #80GG, revised December 21, 2005; Snow Engineering Co. Drawing Number 20975, Sheet 4, Rev. A, dated January 7, 2009.

(i) *For all airplanes:* Before further flight when cracks are found that cannot be repaired by doing the actions specified in paragraph (i)(3)(i) of this AD.

(ii) *For airplanes previously affected by AD 2010–17–18 R1:* Before or when the airplane reaches the wing main spar lower cap safe life of a total of 8,000 hours TIS or within the next 50 hours TIS after September 9, 2010 (the effective date retained from AD 2010–17–18), whichever occurs later.

(iii) *For airplanes not previously affected by AD 2010–17–18 R1:* Before or when the airplane reaches the wing main spar lower cap safe life of a total of 8,000 hours TIS or within the next 50 hours TIS after the effective date of this AD, whichever occurs later.

**(j) Actions for Airplanes SNs –0179 Through –0269**

Replace the wing main spar lower caps, the web plates, the center joint splice blocks and hardware, and the wing attach angles and hardware, and install the steel web splice plate at the compliance times specified in paragraphs (j)(1) or (j)(2) of this AD. Do the replacement following Snow Engineering Co. Service Letter #284, dated October 4, 2009; Snow Engineering Co. Service Letter #80GG, revised December 21, 2005; and Snow Engineering Co. Drawing Number 20975, Sheet 4, Rev. A, dated January 7, 2009. After

this replacement the new spar safe life is 11,700 hours TIS.

(1) *For airplanes previously affected by AD 2010–17–18 R1:* Unless already done (compliance with AD 2010–17–18 R1), by the 8,000-hour TIS safe life, or within the next 50 hours TIS after September 9, 2010 (the effective date retained from AD 2010–17–18), whichever occurs later.

(2) *For airplanes not previously affected by AD 2010–17–18 R1:* Unless already done, by the 8,000-hour TIS safe life, or within the next 50 hours TIS after the effective date of this AD, whichever occurs later.

**(k) Actions for Airplanes S/Ns –0270 and Subsequent Not Affected by AD 2010–17–18**

(1) As of the effective date of this AD, this action establishes the safe life for the wing main spar to be 11,700 hours TIS.

(2) Upon reaching the 11,700-hour TIS safe life or within the next 50 hours TIS after the effective date of this AD, whichever occurs later, replace the wing main spar lower caps, the web plates, the center joint splice blocks and hardware, and the wing attach angles and hardware, and install the steel web splice plate. After this replacement the subsequent new spar safe life is 11,700 hours TIS. Do the replacement following Snow Engineering Co. Service Letter #284, dated October 4, 2009; Snow Engineering Co. Service Letter #80GG, revised December 21, 2005; and Snow Engineering Co. Drawing Number 20975, Sheet 4, Rev. A, dated January 7, 2009.

**(l) Reporting Requirement for All Airplanes**

Report any crack from any inspection required in paragraphs (g) through (i) of this AD within 30 days after the cracks are found on the form in Figure 1 of this AD. Send your report to Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370.

| DOCKET NO. FAA-2014-0077 INSPECTION REPORT *(REPORT ONLY IF CRACKS ARE FOUND)* | |
|---|---|
| **General Information** | |
| 1. Inspection Performed By: | 2. Phone: |
| 3. Aircraft Model: | 4. Aircraft Serial Number: |
| 5. Engine Model Number: | 6. Aircraft Total Hours TIS: |
| 7. Wing Total Hours TIS: | 8. Lower Spar Cap Hours TIS: |
| **Previous Inspection/Repair History** | |
| 9. Has the lower spar cap been inspected (eddy-current, dye penetrant, magnetic particle, or ultrasound) before? ☐ Yes ☐ No | If yes, an inspection has occurred: Date: _____ Inspection Method: _____ Lower Spar Cap TIS: _____ Cracks found? ☐ Yes ☐ No |
| 10. Has there been any major repair or alteration performed to the spar cap? ☐ Yes ☐ No | If yes, specify (Description and hours TIS): |
| **Inspection for Docket No. FAA-2014-0077** | |
| 11. Date of AD inspection: Inspection Results: | 11a. Cracks found: ☐ Left Hand ☐ Right Hand |
| 11b. Crack Length:_____ Location: _____ | 11c. Does drilling hole to next larger size remove all traces of the crack(s)? ☐ Yes ☐ No |
| 12d. Corrective Action Taken: | |

Send report (only if you find any cracks as a result of the inspection for AD 2010-17-18 R1) to: Andrew McAnaul, Aerospace Engineer, ASW-150 (c/o MIDO-43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308-3365; fax: (210) 308-3370

Figure 1

**(m) Special Flight Permit**

Special flight permits are permitted with the following limitations:

(1) Only operate in day visual flight rules (VFR).

(2) Ensure that the hopper is empty.

(3) Limit airspeed to 135 miles per hour (mph) indicated airspeed (IAS).

(4) Avoid any unnecessary g-forces.

(5) Avoid areas of turbulence.

(6) Plan the flight to follow the most direct route.

**(n) Paperwork Reduction Act Burden Statement**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the

requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

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

(1) The Manager, Fort Worth Airplane Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (p) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(3) AMOCs approved for AD 2010–17–18 are approved as AMOCs for this AD.

**(p) Related Information**

(1) For more information about this AD, contact Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

(2) For service information identified in this AD, contact Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612; email: *airmail@airtractor.com;* Internet: *www.airtractor.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Issued in Kansas City, Missouri, on February 5, 2014.

**Earl Lawrence,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2014–03024 Filed 2–11–14; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2014–0070; Directorate Identifier 2011–SW–062–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Helicopter Textron Canada Helicopters

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

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 407 helicopters. This proposed AD would require inspecting the aft fuselage upper skin (upper skin) for a crack and the upper left longeron assembly (longeron assembly) for a crack, corrosion, or defect. This AD would require replacing or repairing a part or section, depending on the inspection's outcome. This proposed AD is prompted by reports of cracks in the upper left-hand longeron. The proposed actions are intended to prevent failure of the longeron assembly or the upper skin, which could lead to a structural failure and loss of helicopter control.

**DATES:** We must receive comments on this proposed AD by April 14, 2014.

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

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

### Examining the AD Docket

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

For service information identified in this proposed AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *sharon.y.miles@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

### Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD No. CF–2011–42, dated November 9, 2011, to correct an unsafe condition for certain BHTC Model 407 helicopters. TCCA advises that longeron assemblies, part numbers (P/Ns) 206–031–314–037, 206–031–314–177, and 206–031–314–219B, installed on helicopters with

1,200 or more hours air time, are prone to cracking. The TCCA AD requires, based on hours air time since new, visually inspecting the aft fuselage upper skin for cracks and replacing the skin if cracked. The TCCA AD also requires visually inspecting the longeron assembly for cracks and general condition. If the longeron assembly is serviceable, the TCCA AD requires repeating the inspection of the longeron assembly for cracks and general condition at intervals based on whether external strap doublers are installed. If the longeron assembly is cracked, the TCCA AD requires repairing or replacing it, installing three external strap doublers, and repeating the inspection of the longeron assembly if it was repaired. Installing a new longeron assembly, P/N 206–031–314–237B, and the three external strap doublers constitutes terminating action of the TCCA AD.

**FAA's Determination**

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to our bilateral agreement with Canada, the TCCA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

**Related Service Information**

BHTC has issued Alert Service Bulletin 407–11–95, Revision C, dated April 20, 2012 (ASB), to correct an unsafe condition for Model 407 helicopters, serial numbers 53000 through 53900, 53911 through 54061, and 54300, with a flight time of 1200 or more hours, and with a longeron assembly, P/N 206–031–314–037, 206–031–314–177, or 206–031–314–219B. The ASB states that BHTC received reports of longeron assemblies cracking in service. The ASB:

- Specifies a one-time inspection of the aft fuselage top skin and repetitive inspections of the upper left longeron assembly;
- Provides a repair procedure for the longeron assembly;
- Allows for the installation of longeron assembly, P/N 206–031–314–237B, and three external strap doublers as terminating action for the repetitive inspection requirements.

**Proposed AD Requirements**

We propose the following:

Within 50 hours time-in-service (TIS), or prior to reaching 1,250 hours TIS since new, whichever occurs later, visually inspect the upper skin for a crack using a 10X or higher power magnifying glass.

- If there is a crack in the upper skin, before further flight, remove the skin and inspect the longeron assembly, paying attention to the upper flange, for a crack, corrosion, or other damage using a 10X or higher power magnifying glass. If there are no cracks, corrosion, or other damage in the longeron assembly, before further flight, replace the upper skin with an airworthy upper skin. Repeat the inspection of the longeron assembly at intervals not to exceed 50 hours TIS. If there is a crack, corrosion, or other damage in the longeron assembly, before further flight: Repair the longeron assembly or replace it with an airworthy longeron assembly, P/N 206–031–314–237B, and reinstall the upper skin or replace it with an airworthy upper skin. Install three external strap doublers. Repeat the inspection of the longeron assembly at intervals not to exceed 50 hours TIS.
- If there is no crack in the upper skin, within 10 hours TIS, visually inspect the longeron assembly using a 10X or higher power magnifying glass for a crack, corrosion, or other damage. If there is a crack, corrosion, or other damage in the longeron assembly, before further flight: Repair the longeron assembly or replace it with an airworthy longeron assembly, P/N 206–031–314–237B. Install three external strap doublers. Repeat the inspection of the upper skin and longeron assembly at intervals not to exceed 50 hours TIS. If there are no cracks, corrosion, or other damage in the longeron assembly, repeat the inspection of the upper skin and longeron assembly at intervals not to exceed 50 hours TIS.
- Replacing the longeron assembly with longeron assembly, P/N 206–031–314–237B, and installing three external strap doublers constitutes terminating action for this AD. If there is no crack in the upper skin and no crack, corrosion or other damage in the longeron assembly, you may install three external strap doublers, which will extend the recurring 50 hours TIS inspection interval to 150 hours TIS.

**Costs of Compliance**

We estimate that this proposed AD would affect 584 helicopters of U.S. Registry and that labor costs average $85 an hour. Based on these estimates, we estimate the following costs:

A one-time visual inspection of the aft fuselage upper skin would require 1 work-hour and no parts for a total cost of $85 per helicopter, $49,640 for the U.S. fleet.

A visual inspection of the longeron and replacing the aft fuselage upper skin would require 3 work hours for a labor cost of $255 per helicopter. Parts would cost $723 for parts for total cost of $978 per helicopter.

Repairing the longeron if needed and installing the doublers would require 16 work hours for a labor cost of $1,360. Parts would cost $3,928 for a total cost of $5,288 per helicopter.

Replacing the longeron with P/N 206–031–314–237B combined with the installation of the three external strap doublers would require 24 work hours for a labor cost of $2,040. Parts would cost $13,560 for a total cost of $15,600 per helicopter.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Bell Helicopter Textron Canada:** Docket No. FAA–2014–0070; Directorate Identifier 2011–SW–062–AD.

**(a) Applicability**

This AD applies to Bell Helicopter Textron Canada (BHTC) Model 407 helicopters, with a serial number 53000 through 53900, 53911 through 54061, and 54300, with an upper left longeron assembly (longeron assembly), part number (P/N) 206–031–314–037, 206–031–314–177, or 206–031–314–219B, installed, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as a crack in the aft fuselage upper skin or a crack, corrosion, or defect in the longeron assembly. This condition could cause structural failure and consequently, loss of helicopter control.

**(c) Comments Due Date**

We must receive comments by April 14, 2014.

**(d) Compliance**

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

**(e) Required Actions**

Within 50 hours time-in-service (TIS), or prior to reaching 1,250 hours TIS since new, whichever occurs later, visually inspect the helicopter's aft fuselage upper skin (upper skin) for a crack using a 10X or higher power magnifying glass.

(1) If there is a crack in the upper skin, before further flight, remove the skin and inspect the longeron assembly, paying attention to the upper flange, for a crack, corrosion, or other damage using a 10X or higher power magnifying glass.

(i) If there are no cracks, corrosion, or other damage in the longeron assembly, before further flight, replace the upper skin with an airworthy upper skin. Repeat the inspection of the longeron assembly at intervals not to exceed 50 hours TIS.

(ii) If there is a crack, corrosion, or other damage in the longeron assembly, before further flight:

(A) Repair the longeron assembly or replace it with an airworthy longeron assembly, part number (P/N) 206–031–314–237B, and reinstall the upper skin or replace it with an airworthy upper skin.

(B) Install three external strap doublers in accordance with Part III, paragraphs 5 through10 of Bell Alert Service Bulletin 407–11–95, Revision C, dated April 20, 2012 (ASB).

(C) Repeat the inspection of the longeron assembly at intervals not to exceed 50 hours TIS.

(2) If there is no crack in the upper skin, within 10 hours TIS, visually inspect the longeron assembly using a 10X or higher power magnifying glass for a crack, corrosion, or other damage.

(i) If there is a crack, corrosion, or other damage in the longeron assembly, before further flight:

(A) Repair the longeron assembly or replace it with an airworthy longeron assembly, P/N 206–031–314–237B.

(B) Install three external strap doublers in accordance with Part III, paragraphs 5 through 10 of the ASB.

(C) Repeat the inspection of the upper skin and longeron assembly at intervals not to exceed 50 hours TIS.

(ii) If there are no cracks, corrosion, or other damage in the longeron assembly, repeat the inspection of the upper skin and longeron assembly at intervals not to exceed 50 hours TIS.

(3) Replacing the longeron assembly with longeron assembly, P/N 206–031–314–237B, and installing three external strap doublers constitutes terminating action for this AD.

(4) If there is no crack in the upper skin and there is no crack, corrosion, or other damage in the longeron assembly, you may install three external strap doublers in accordance with Part III, paragraphs 5 through 10 of the ASB. This option extends the recurring 50 hours TIS inspection interval to 150 hours TIS.

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

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Sharon Miles, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *sharon.y.miles@faa.gov.*

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

**(g) Additional Information**

The subject of this AD is addressed in Transport Canada Civil Aviation (TCCA) AD No. CF–2011–42, dated November 9, 2011. You may view the TCCA AD in the AD docket on the Internet at *http://www.regulations.gov.*

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 5313, Fuselage Main, Longeron/Stringer.

Issued in Fort Worth, Texas, on January 31, 2014.

**Lance T. Gant,**

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

[FR Doc. 2014–02954 Filed 2–11–14; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0806; Airspace Docket No. 13–ASO–21]**

## Proposed Amendment of Class D and Class E Airspace, and Proposed Establishment of Class E Airspace; Tri-Cities, TN

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

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

**SUMMARY:** This action proposes to amend Class D and Class E Airspace, and establish Class E airspace at Tri-Cities Regional Airport, Tri-Cities, TN. Airspace reconfiguration would alleviate traffic issues in the surrounding area for Johnson City Airport and Edwards Heliport so flights could navigate in and out of their respective airports in Visual Flight Rules conditions under 700 feet. This would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations in the area.

**DATES:** Comments must be received on or before March 31, 2014.

**ADDRESSES:** Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0806; Airspace Docket No. 13–ASO–21, at the beginning of your comments. You may also submit and review received

comments through the Internet at *http://www.regulations.gov.*

**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:**

## Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0806; Airspace Docket No. 13–ASO–21) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0806; Airspace Docket No. 13–ASO–21.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

## The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class D airspace, and Class E surface area airspace at Tri Cities Regional Airport, Tri-Cities, TN. Both the Class D airspace area and Class E surface area airspace would be reduced from a 6.8-mile radius of the airport to within a 4.3-mile radius of the airport.

The FAA found it necessary to establish Class E airspace designated as an extension to a Class D surface area at Tri-Cities Airport because removal of the previous airspace configuration caused congestion for pilots traveling to/from two neighboring airports, Edwards Heliport and Johnson City Airport (see 78 FR 7993, February 5, 2013). Controlled airspace would be established within a 4.3-mile radius of Tri-Cities Airport, with a segment extending from the 4.3-mile radius of the airport to 6.8 miles northeast of the airport. This action is necessary for continued safety and management of IFR operations in the Tri-Cities area.

Class D and E airspace designations are published in Paragraphs 5000, 6002, and 6004, respectively of FAA Order 7400.9X, dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 proposed 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 proposed regulation is within the scope of that authority as it would amend Class D and Class E airspace at Tri-Cities Regional Airport, Tri-Cities, TN.

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

## Lists of Subjects in 14 CFR Part 71:

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment:

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

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

■ 1. The authority citation for 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 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, effective September 15, 2013, is amended as follows:

*Paragraph 5000 Class D Airspace*

* * * * *

**ASO TN D Tri-Cities, TN [Amended]**

Tri-Cities Regional Airport, TN/VA
(Lat. 36°28′31″ N., long. 82°24′27″ W.)

That airspace extending upward from the surface to and including 4,000 feet MSL within a 4.3-mile radius of Tri-Cities Regional Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

*Paragraph 6002 Class E Airspace Designated as Surface Areas*

* * * * *

**ASO TN E2 Tri-Cities, TN [Amended]**

Tri-Cities Regional Airport, TN/VA
(Lat. 36°28′31″ N., long. 82°24′27″ W.)

That airspace extending upward from the surface within a 4.3-mile radius of Tri-Cities Regional Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

*Paragraph 6004 Class E Airspace Designated as an Extension to a Class D Surface Area*

* * * * *

**ASO TN E4 Tri-Cities, TN [New]**

Tri-Cities Regional Airport, TN/VA
(Lat. 36°28′31″ N., long. 82°24′27″ W.)

That airspace extending from the surface within 2.5-miles either side of the 043° bearing from Tri-Cities Regional Airport, extending from the 4.3-mile radius to 6.8-miles northeast of the airport. This Class E airspace area is effective during 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 College Park, Georgia, on February 4, 2014.

**Eric Fox,**

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

[FR Doc. 2014–03046 Filed 2–11–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2014–0025; Airspace Docket No. 14–ANE–1]**

## Proposed Amendment of Class E Airspace; Greenville, ME

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

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

**SUMMARY:** This action proposes to amend Class E Airspace at Greenville, ME, as the Squaw Non-Directional Beacon (NDB) has been decommissioned, requiring airspace redesign at Greenville Municipal Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also would update the geographic coordinates of airport.

**DATES:** Comments must be received on or before March 31, 2014.

**ADDRESSES:** Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2014–0025; Airspace Docket No. 14–ANE–1, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

**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:**

### Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2014–0025; Airspace Docket No. 14–ANE–1) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2014–0025; Airspace Docket No. 14–ANE–1.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface at Greenville Municipal Airport, Greenville, ME. Airspace reconfiguration to within a 9.4-mile radius of the airport is necessary due to the decommissioning of the Squaw NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport. The geographic coordinates of Greenville Municipal Airport would be adjusted to coincide with the FAA's aeronautical database.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9X, dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation

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

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will 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 proposed 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 proposed regulation is within the scope of that authority as it would amend Class E airspace at Greenville Municipal Airport, Greenville, ME.

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

■ 1. The authority citation for 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 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, effective September 15, 2013, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth*

* * * * *

**ANE ME E5 Greenville, ME [Amended]**

Greenville Municipal Airport, ME
(Lat. 45°27′46″ N., long. 69°33′06″ W.)

That airspace extending upward from 700 feet above the surface within a 9.4-mile radius of Greenville Municipal Airport, and within 2 miles each side of the 320° bearing of the airport extending from the 9.4-mile radius to 14 miles northwest of the airport.

Issued in College Park, Georgia, on February 4, 2014.

**Eric Fox,**

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

[FR Doc. 2014–03044 Filed 2–11–14; 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–2013–0439; Airspace Docket No. 13–ASO–9]**

## Proposed Amendment of Class E Airspace; Sylva, NC

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

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

**SUMMARY:** This action proposes to amend Class E Airspace at Sylva, NC, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) serving Jackson County Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

**DATES:** Comments must be received on or before March 31, 2014.

**ADDRESSES:** Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0439; Airspace Docket No. 13–ASO–9, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

**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:**

**Comments Invited**

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0439; Airspace Docket No. 13–ASO–9) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0439; Airspace Docket No. 13–ASO–9.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web

page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace at Sylva, NC, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for Jackson County Airport. Controlled airspace extending upward from 700 feet above the surface is required for IFR operations within a 14-mile radius of the airport.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9X, dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 proposed 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 proposed regulation is within the scope of that authority as it would amend Class E airspace at Jackson County Airport, Sylva, NC.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment:**

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

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS 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 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, effective September 15, 2013, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth*

* * * * *

**ASO NC E5 Sylva, NC [Amended]**

Jackson County Airport, NC
(Lat. 35°19′03″ N., long. 83°12′36″ W.)

That airspace extending upward from 700 feet above the surface within a 14-mile radius of Jackson County Airport.

Issued in College Park, Georgia, on February 4, 2014.

**Eric Fox,**

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

[FR Doc. 2014–03056 Filed 2–11–14; 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–2012–1086; Airspace Docket No. 12–ASO–40]**

## Proposed Establishment of Class E Airspace; Geneva, AL

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

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

**SUMMARY:** This action proposes to establish Class E Airspace at Geneva, AL, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) serving Geneva Municipal Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

**DATES:** Comments must be received on or before March 31, 2014.

**ADDRESSES:** Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2012–1086; Airspace Docket No. 12–ASO–40, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

**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:**

**Comments Invited**

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing

reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2012–1086; Airspace Docket No. 12–ASO–40) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2012–1086; Airspace Docket No. 12–ASO–40.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Geneva, AL, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for Geneva Municipal Airport. Controlled airspace extending upward from 700 feet above the surface is required for IFR operations within a 7.3-mile radius of the airport.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9X, dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 proposed 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 proposed regulation is within the scope of that authority as it would establish Class E airspace at Geneva Municipal Airport, Geneva, AL.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment:**

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

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS 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 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, effective September 15, 2013, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth*

* * * * *

**ASO AL E5 Geneva, AL [New]**

Geneva Municipal Airport, AL
(Lat. 31°03′09″ N., long. 85°52′08″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Geneva Municipal Airport.

Issued in College Park, Georgia, on February 4, 2014.

**Eric Fox,**

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

[FR Doc. 2014–03063 Filed 2–11–14; 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–2013–0731; Airspace Docket No. 13–ASO–18]**

## Proposed Establishment of Class E Airspace; Blairsville, GA

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

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

**SUMMARY:** This action proposes to establish Class E Airspace at Blairsville, GA, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) serving Blairsville Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

**DATES:** Comments must be received on or before March 31, 2014.

**ADDRESSES:** Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0731; Airspace Docket No. 13–ASO–18, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

**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:**

## Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0731; Airspace Docket No. 13–ASO–18) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0731; Airspace Docket No. 13–ASO–18.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

## The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Blairsville, GA, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for Blairsville Airport. Controlled airspace extending upward from 700 feet above the surface is required for IFR operations within a 16-mile radius of the airport.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9X, dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 proposed 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 proposed regulation is within the scope of that authority as it would establish Class E airspace at Blairsville Airport, Blairsville, GA.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

## Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment:

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

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS 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 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, effective September 15, 2013, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth*

* * * * *

**ASO GA E5 Blairsville, GA [New]**

Blairsville Airport, GA
(Lat. 34°51′16″ N., long. 83°59′50″ W.)

That airspace extending upward from 700 feet above the surface within a 16-mile radius of Blairsville Airport.

Issued in College Park, Georgia, on February 4, 2014.

**Eric Fox,**

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

[FR Doc. 2014–03053 Filed 2–11–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0932; Airspace Docket No. 13–ASO–24]**

## Proposed Establishment of Class E Airspace; Nashville, TN

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

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

**SUMMARY:** This action proposes to establish Class E Airspace at Nashville, TN, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) serving Nashville International Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

**DATES:** Comments must be received on or before March 31, 2014.

**ADDRESSES:** Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0932; Airspace Docket No. 13–ASO–24, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

**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:**

### Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0932; Airspace Docket No. 13–ASO–24) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0932; Airspace Docket No. 13–ASO–24.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace as an extension to a Class C surface area at Nashville, TN, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for Nashville International Airport. Accordingly, a segment of controlled airspace would extend from the 5-mile radius of the airport to 11.7-miles south of the airport, and a segment would extend from the 5-mile radius of the airport to 8.9 miles southwest of the airport.

Class E airspace designations are published in Paragraph 6003 of FAA order 7400.9X, dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 proposed 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 proposed regulation is within the scope of that authority as it would establish Class E airspace at Nashville International Airport, Nashville, TN.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment:**

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

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS 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 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, effective September 15, 2013, is amended as follows:

*Paragraph 6003 Designated as an Extension to a Class C Surface Area*

* * * * *

**ASO TN E3 Nashville, TN [New]**

Nashville International Airport, TN
(Lat. 36°07′31″ N., long. 86°40′35″ W.)
Nashville VORTAC
(Lat. 36°07′62″ N., long. 86°40′95″ W.)

That airspace extending upward from the surface extending from the 5-mile radius of the Nashville International Airport to an 11.7-mile radius southeast of the airport, from the Nashville VORTAC 161° radial clockwise to the 195° radial, and to an 8.9-mile radius southwest of the airport from the 195° radial of the VORTAC clockwise to the 231° radial of the VORTAC.

Issued in College Park, Georgia, on February 4, 2014.

**Eric Fox,**

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

[FR Doc. 2014–03045 Filed 2–11–14; 8:45 am]

BILLING CODE 4910–13–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R06–OAR–2013–0542; FRL–9906–37–Region 6]**

## Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review State Implementation Plan; Flexible Permit Program

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to conditionally approve revisions to the Texas New Source Review (NSR) State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) [1] and its predecessor, the Texas Natural Resource Conservation Commission (TNRCC), on November 29, 1994; March 13, 1996; July 22, 1998; October 25, 1999; September 11, 2000; April 12, 2001; July 31, 2002, September 4, 2002; October 4, 2002; September 25, 2003; July 2, 2010; October 5, 2010; and October 21, 2013. These revisions to the Texas SIP establish the Flexible Permit Program. The flexible permit program is a minor NSR permit program which functions as an alternative to the traditional preconstruction permit program that is authorized in Title 30 of the Texas Administrative Code (30 TAC) Chapter 116, Subchapter B. The flexible permit program is intended to eliminate the need for owners or operators of participating facilities to submit an amendment application each time certain types of operational or physical changes are made at a permitted facility. EPA is proposing to conditionally approve the Flexible Permit Program as initially submitted in November 1994 and amended through the October 21, 2013, as consistent with federal requirements for minor NSR programs. Final approval of the Texas Flexible Permit Program is contingent upon TCEQ adopting and submitting to EPA an approvable SIP revision addressing the commitments made by the TCEQ in its October 21, 2013, Flexible Permits Commitment Letter. EPA is proposing this action under Section 110 and part C of the Clean Air Act (CAA or the Act).

**DATES:** Comments must be received on or before March 14, 2014.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R06–OAR–2013–0542, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email:* Ms. Stephanie Kordzi at *kordzi.stephanie@epa.gov.*
- *Fax:* Ms. Stephanie Kordzi, Air Permits Section (6PD–R), at fax number 214–665–6762.
- *Mail or delivery:* Ms. Stephanie Kordzi, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

*Instructions:* Direct your comments to Docket ID No. EPA–R06–OAR–2013–0542. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or email, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will 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 along with any disk or CD–ROM submitted. 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 and any form of encryption and should be free of any defects or

[1] On September 1, 2002, the Texas Legislature (House Bill 2912) formally changed the name of Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality.

viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253.

**FOR FURTHER INFORMATION CONTACT:** Ms. Stephanie Kordzi (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. Telephone (214) 665–7520, fax (214) 665–6762, email at *kordzi.stephanie@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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## I. Background for Our Proposed Action

On September 23, 2009, EPA proposed to disapprove revisions to the SIP submitted by the State of Texas that relate to the Flexible Permit Program. On July 15, 2010, EPA took final action on that proposal disapproving Texas' Flexible Permit Program. 75 FR 41312. This disapproval action is the only action taken by EPA on the flexible permit program. EPA has never taken any other action to approve the flexible permit program submittals. Below is a summary of our grounds for initially disapproving the Flexible Permit Program as a Minor NSR SIP revision. We originally found that:

- It had no express regulatory prohibition clearly limiting its use to Minor NSR and had no regulatory provision clearly prohibiting the use of this submitted Program from circumventing the Major NSR SIP requirements.
- It was not an enforceable NSR program.
- It lacked requirements necessary for enforcement and assurance of compliance.
- It lacked the necessary more specialized monitoring, recordkeeping and reporting (MRR) requirements required for this type of Minor NSR program (a compliance emission cap) to ensure accountability and provide a means to determine compliance.
- The types of monitoring were not specified in the rule.
- It lacked specific, established implementation procedures for establishing the emissions cap in a Minor NSR Flexible Permit.
- It did not ensure the terms and conditions of Major NSR SIP permits are retained. Holders of Major NSR SIP permits were not prohibited from using the submitted Program's allowable based emissions cap. The Clean Air Act prohibits the use of an allowable based cap for Major NSR SIP permittees.

For a more detailed discussion of our rationale for the disapproval see 75 FR 41312 (July 15, 2010). Upon finalization of the rule several parties appealed the decision to the Fifth Circuit Court of Appeals.

In July and August of 2010 the State of Texas, Texas Oil & Gas Association, Texas Association of Manufacturers, and Business Coalition for Clean Air (BCCA) Appeal Group all filed petitions with the Fifth Circuit Court of Appeals seeking to overturn EPA's disapproval of the Flexible Permit Program. During the same time period the Environmental Defense Fund (''EDF'') and Environmental Integrity Project (''EIP'') moved for leave to intervene in support of EPA's disapproval. Their request to intervene was granted by the Court. While the challenge was pending, the state adopted a modified flexible permits regulation, but did not submit it to EPA.

On August 13, 2012, the Fifth Circuit Court of Appeals granted the petitioner's review, vacated our disapproval of the Texas Flexible Permit Program and remanded the matter back to EPA for further review. After the Court remanded the Flexible Permit Rule to EPA, the State, in a letter dated September 12, 2012, requested that we take action on the original Flexible Permit program submittal package in accordance with the ruling of the Fifth Circuit Court of Appeals. Following discussions with EPA, on September 24, 2013, Texas formally adopted and approved this SIP revision which is comprised of the original submittal that EPA took its disapproval action on as well as rule additions that EPA believes are essential to the program's approvability. On October 21, 2013, Texas formally submitted to EPA this proposed revision to the SIP. EPA is today proposing to conditionally

approve the October 21, 2013, submittal.[2]

## II. Summary of State SIP Submittals for the Flexible Permit Program

The TCEQ has developed and submitted the Flexible Permit Program as a series of revisions to the Texas minor NSR Permit program. The TCEQ developed the Flexible Permit Program in 1994 and has adopted several amendments and submitted these as revisions to the Texas minor NSR SIP program since that time. As discussed in the Section I Background of this rulemaking, EPA is proposing conditional approval of the October 21, 2013, SIP revision approved by TCEQ and submitted for EPA review. The following is a brief summary of each of the SIP revisions pertaining to the Flexible Permit Program that is subject to our proposed conditional approval.

### *A. November 29, 1994 Submittal*

On October 19, 1994, the TNRCC, predecessor to the TCEQ, adopted revisions to the Texas SIP to establish and implement the Flexible Permit Program in Texas. The TCEQ adopted the rule for Flexible Permits at 30 Texas Administrative Code (TAC) Chapter 116, Subchapter G—Flexible Permits; adding Flexible Permit Definitions at 30 TAC Chapter 116, Subchapter A, Section 116.13—Flexible Permit Definitions; and revising the Permit Application provisions at 30 TAC Chapter 116, Subchapter B, Section 116.110(a) to authorize the use of a Flexible Permit for construction of any new minor facility and minor modification of any existing facility. Note that some portions of the November 29, 1994, submittal were later repealed and replaced in the July 22, 1998, submittal.

### *B. March 13, 1996 Submittal*

On February 14, 1996, the TNRCC adopted revisions to the Texas SIP to modify air permit application procedures and evaluation criteria to provide more operational flexibility to facilities. This submittal specifically included revisions to the definition of ''modification of existing facility'' in the General Definitions for Air Permitting at 30 TAC Section 116.10(F) to address modifications under Flexible Permits. This submittal of 30 TAC Section 116.10(F) for ''modification of existing facility'' was later repealed and replaced in the July 22, 1998, SIP submittal and is therefore not before EPA for review.

### *C. July 22, 1998 Submittal*

On June 17, 1998, the TNRCC adopted severable revisions that included the repeal and replacement of portions of the November 29, 1994, submittal and the entirety of the March 13, 1996 submittal. Specific to Flexible Permits, the July 22, 1998, submittal included a new definition of ''modification of existing facility,'' at 30 TAC Section 116.10(9)(F); repeal of and new Flexible Permit Definitions at 30 TAC Section 116.13 and Section 116.110; and amendments to the 30 TAC Sections 116.710, 116.711, 116.714, 116.715, 116.721, 116.730, 116.740, and 116.750. The definitions in section 116.13 were non-substantive. An operations certification requirement for flexible permits was removed from 116.110. The amendments to the remaining sections added or clarified language regarding BACT, compliance with FCAA Section 112(g), or were non-substantive changes.

### *D. October 25, 1999 Submittal*

On September 2, 1999, the TNRCC adopted revisions to the Texas SIP to implement Texas House Bill 801 to establish new procedures for public participation in environmental permitting. The TNRCC submitted these amendments as revisions to the Texas SIP in a letter dated October 25, 1999. The October 25, 1999, submittal included revisions to the Flexible Permits public participation provisions at 30 TAC Section 116.740.

### *E. September 11, 2000 Submittal*

On August 9, 2000, the TNRCC adopted amendments to 30 TAC Chapters 101, 106, and 116 to implement the remaining requirements of Senate Bill 766 from the 76th Legislature. This included amendments to Chapter 116, Subchapter G, 30 TAC Sections 116.710, 116.715, 116.721, 116.722, and 116.750. The amendments to 30 TAC Chapters 101 and 116 implement the remaining requirements of Senate Bill 766 from the 76th Legislature. The amendments tripled emission fees for grandfathered facilities with emissions in excess of 4,000 tons per year after September 1, 2001, updated public participation requirements for the issuance of standard permits, and made nonsubstantive changes to other related provisions.

### *F. April 12, 2001 Submittal*

On March 7, 2001, the TNRCC adopted revisions to Subchapter G, 30 TAC Sections 116.711 and 116.715. The amendments supplement the cap and trade program for the Houston/Galveston (HGA) ozone nonattainment area by clarifying that any source of emissions of nitrogen oxides ($NO_X$) in the HGA area that uses certain permits, including flexible permits, must obtain allowances for those emissions if the facility, or group of facilities, has a collective design capacity to emit ten tons or more of $NO_X$ per year and is subject to an emission standard in 30 TAC Section Chapter 117 and by allowing the use of $NO_X$ allowances to meet the correlating portion of emissions offset requirements.

### *G. July 31, 2002 Submittal*

On May 22, 2002, the TNRCC adopted amendments to Chapter 39, Public Notice, and Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. The adopted changes concern requirements of procedures for the permitting of grandfathered facilities and an incentive program for the reduction of emissions of nitrogen oxides for certain types of facilities.

### *H. September 4, 2002 Submittal*

On August 21, 2002, the TNRCC adopted revisions re-defining ''modification of existing facility'' from 30 TAC Section 116.10(9)(F) to 30 TAC Section 116.10(11)(F). The revisions also clarified permit renewal application content requirements and implemented new compliance history evaluation requirements for permit renewals.

### *I. October 4, 2002 Submittal*

On September 25, 2002, the TCEQ adopted amendments to various fee rules in Chapters 101, 106, and 116 including 116.750, Flexible Permit Fee, and corresponding revisions to the SIP. The increases were established to provide sufficient funding to meet the current appropriation levels for air program activities and to meet operational funding requirements for the Title V programs of the commission.

### *J. September 25, 2003 Submittal*

On August 20, 2003, the TCEQ adopted revisions to Subchapter G, 30 TAC Section 116.715. The revisions require emission reductions to be certified as emission reduction credits under 30 TAC Chapter 101, Subchapter H, except future internal offsets which will continue to be certified under Chapter 116.

[2] This October 21, 2013 submittal, including the Texas Order dated September 26, 2013, and the accompanying cover letter (available in the docket for this rulemaking), essentially resubmits all relevant portions of the prior Flexible Permits submittals and therefore constitutes the entire Flexible Permit Program.

*K. July 2, 2010 Submittal*

On June 2, 2010, the TCEQ adopted amendments to the Texas regulations concerning Public Notice at 30 TAC Chapter 39; Requests for Reconsideration and Contested Case Hearings; Public Notice at 30 TAC Chapter 55; and Control of Air Pollution by Permits for New Construction or Modification at 30 TAC Chapter 116. This particular rule package was submitted to EPA on July 2, 2010, after the EPA's final disapproval of the pending package of proposed SIP revisions before it, and is not part of the October 21, 2013, submittal, which included only the program in effect as of September 13, 2003 and select 2010 rule amendments.

The July 2, 2010 submittal included 30 TAC Sections 39.402(a)(4) and (a)(5) establishing applicability of public notice provisions for new Flexible Permits and amendments to Flexible Permits under 30 TAC Chapter 116.

On December 13, 2012, EPA proposed to approve the July 2, 2010, Public Participation SIP Revision. In doing so, EPA severed the Flexible Permit public participation provisions at 30 TAC Section 39.402(a)(4) and (a)(5). We also indicated it was our intent to address the revisions to Chapter 39 for Flexible Permits at the time we proposed action on the Flexible Permit program. On January 6, 2014, EPA finalized our approval of the July 2, 2010, Public Participation SIP revision; our final approval severed and did not address the public participation provisions at 30 TAC Sections 39.402(a)(4) and (a)(5) specific to Flexible Permits. EPA now finds it appropriate to address the July 2, 2010, submittal of 30 TAC Section 39.402(a)(4) and (a)(5) because we are addressing the entirety of the Flexible Permit program and the revisions of the associated Flexible Permits public participation provisions at 30 TAC Section 116.740.

*L. October 5, 2010 Submittal*

On September 15, 2010, the TCEQ adopted amendments to Section 116.10(9)(E) to change a portion of the definition for ''modification of existing facility''. Only this specific regulatory definition is being acted on in this action because it directly affects the flexible permit rule. The entire submittal package consisted of new and amended sections prepared in response to EPA's disapproval of the TCEQ rules that implemented the state's qualified facilities program. The October 5, 2010, submittal came in after the EPA's final disapproval of July 15, 2010, and is not part of the October 21, 2013, submittal, which included only the program in effect as of September 13, 2003, and select 2010 rule amendments.

*M. October 21, 2013 Submittal*

On September 24, 2013, the TCEQ adopted and approved for submission to EPA the Flexible Permit Program at 30 TAC Chapter 116, Subchapter G. The EPA received the formal submission on October 21, 2013. The entire SIP submittal included the flexible permit rules first adopted by the TCEQ in November 1994 in Chapter 116, Subchapter G to establish the flexible permit minor new source review program. Some of the rules were repealed and readopted in 1998, and various amendments to the rules that were adopted in 1999–2003. The package also contained revisions as adopted on December 14, 2010, which included 30 TAC Sections 116.13(3) and (5); 116.711(2)(M), and paragraphs (iv) and (vii); 116.715(c)(5)(A) & (B), 116.715(6)(A)(i) and (ii), 116.715(d), except the text ''The permit shall specify which of the monitoring options under paragraph (2)(A)–(E) of this subject shall be used to determine compliance for facilities subject to monitoring under this subsection,'' 116.715(d)(1), 116.715(f); 116.716(a), 116.716(c), 116.716(d) and 116.716(e), with repeal of earlier Sections 116.716(d) and 116.716(e).

Further, the submittal included various provisions that EPA believes are essential to its approvability. These include: Definitions for emission cap and individual emission limitation; discussion on maintaining terms, conditions, and representations of any Subchapter B permits that will be superseded by or incorporated into the flexible permit; inclusion of requirements for monitoring and calculations for demonstration of compliance with emission caps and individual emission limits; revised requirements for recordkeeping of information and data sufficient to demonstrate continuous compliance with emission caps and individual emission limits; requirements that monitoring systems used to determine compliance with pollutant emissions in terms of mass per unit of time must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation; and provisions addressing how to develop emission caps based upon application of current best available control technology at expected maximum capacity. Further, references to insignificant emission factors were removed since they are no longer allowed when calculating emission caps. And finally, new requirements for developing individual emission limitations in flexible permits were also included which require permits to identify all facilities subject to either emission caps or individual emission limits.

Table 1 below summarizes the changes that are in the SIP revision submittals. A summary of EPA's evaluation of each Section and the basis for our proposed conditional approval of the Flexible Permit Program as a minor NSR permit program is included in this rulemaking. The accompanying Technical Support Document (TSD) includes a detailed evaluation of the submittals and our rationale. The TSD may be accessed online at *www.regulations.gov,* Docket No. EPA–R06–OAR–2013–0542.

TABLE 1—SUMMARY OF EACH FLEXIBLE PERMIT SIP SUBMITTAL AFFECTED BY THIS ACTION

| Title of SIP submittal | Date submitted to EPA | Date of State adoption | Regulations affected |
|---|---|---|---|
| Flexible Permits | 11/29/1994 | 11/16/1994 | Amendment to 30 TAC Section 116.110<br>Adoption of New 30 TAC Section 116.13 and New Subchapter G, 30 TAC Sections 116.710, 116.711, 116.714, 116.715, 116.716, 116.717, 116.718, 116.720, 116.721, 116.722, 116.730, 116.740, 116.750, and 116.760. |
| Qualified Facilities and Modifications to Existing Facilities. | 3/13/1996 | 2/14/1996 | Amendment of 30 TAC Section 116.10 to add new definition of "modification of existing facility" at (F). |

TABLE 1—SUMMARY OF EACH FLEXIBLE PERMIT SIP SUBMITTAL AFFECTED BY THIS ACTION—Continued

| Title of SIP submittal | Date submitted to EPA | Date of State adoption | Regulations affected |
|---|---|---|---|
| NSR Rule Amendments; section 112(g) Rule Review for Chapter 116. | 7/22/1998 | 6/17/1998 | Repeal and new 30 TAC Section 116.10(9)(F), 116.13 and 116.110(a)(3) adopted.<br>Amendments to Subchapter G, 30 TAC Sections 116.710, 116.711, 116.714, 116.715, 116.721, 116.730, 116.740 and 116.750. |
| Public Participation (HB 801) | 10/25/1999 | 9/2/1999 | Amendment to Subchapter G, 30 TAC Section 116.740. |
| Air Permits (SB–766)—Phase II | 9/11/2000 | 8/9/2000 | Amendments to Subchapter G, 30 TAC Sections 116.710, 116.715, 116.721, 116.722, and 116.750. |
| Emissions Banking and Trading | 4/12/2001 | 3/7/2001 | Amendments to Subchapter G, 30 TAC Sections 116.711 and 116.715. |
| House Bill 3040: Shipyard Facilities and NSR Maintenance Emissions. | 9/4/2002 | 8/21/2002 | Amendment to 30 TAC Section 116.10, re-designating 30 TAC Sections 116.10(9)(F) to 116.10(11)(F).<br>Amendments to Subchapter G, 30 TAC Sections 116.711 and 116.715. |
| Air Fees | 10/4/2002 | 9/25/2002 | Amendments to Subchapter G, 30 TAC Section 116.750. |
| Offset Certification, New Source Review Permitting Processes and Extensions for Construction. | 9/25/2003 | 8/20/2003 | Amendment to Subchapter G, 30 TAC Section 116.715 |
| Public Notice Applicability to Air Quality Permits and Permit Amendments. | 7/2/2010 | 6/2/2010 | New Chapter 39.402(a)(4) and (a)(5) establishing applicability of the Chapter 39 public notice provisions to applications for new and amended Flexible Permits. |
| BACT and Qualified Facility Air Permit Program | 10/5/2010 | 9/15/2010 | Amendments to 30 TAC Section 116.10(9)(E) only in this action. |
| Flexible Permit Program | 10/21/2013 | 12/14/2010 | Amendments to 30 TAC Sections 116.13(3) and (5); 116.711(2)(M)(iv) & (vii); 116.715(c)(5)(A) & (B), 116.715(c)(6)(A), (c)(6)A)(i) and (ii), 116.715(d), except specific text; 116.715(f), excluding 715(f)(2)(A), 116.716(a), 116.716(c), (c)(1)(A) and (B), 116.716(c)(2), 116.716(c)(3), 116.716(c)(4), and 116.716(d)[new] and (e) and the repeal of 116.716(d). |
| Grandfathered Facilities | 5/22/2002 | ..... | Withdrawal 30 TAC Sections 116.793–116.802 and 116.804–116.807, adopted May 22, 2002, except Section 116.794(11), 116.795(f) and 116.799(a), which were returned to the Commission by letter from EPA dated June 29, 2011; and Section 116.803, adopted August 21, 2002. |

*N. Overview of the Flexible Permit Program and Establishment of the Emission Cap*

The Flexible Permit Program is a minor NSR permitting program developed to provide additional flexibility to the regulated community. As is evident in the preceding Section, the Flexible Permit program has been revised and evolved over time and various sections have been submitted to EPA for approval but then repealed and withdrawn. To provide context to our proposed conditional approval we provide the following summary of the key features of the Texas Flexible Permit Program, as it exists before us for review and as described in this preamble. Importantly, Texas has also submitted an interpretive letter, dated December 9, 2013, discussed more fully below, that gives Texas' interpretations of provisions of its submittal that, in some cases, EPA is relying on in this proposal to conditionally approve the package. For more information about the Program, please see the SIP revisions submitted by Texas, the interpretive letter, and the accompanying TSD for this proposed action, which are available in the docket for this action.

Pursuant to the submitted Flexible Permit Program, only one Flexible Permit may be issued for an account site.[3] See submitted 30 TAC Section 116.710(a)(1). Therefore, a Flexible Permit cannot cover sources at more than one account. See submitted 30 TAC Section 116.710(a)(4). A person may qualify for a Flexible Permit for construction of a new facility at the account site. 30 TAC Section 116.110(a)(3) and 30 TAC Section 116.710(a)(1). A person may qualify for a Flexible Permit for a modification of an existing facility at the account site. 30 TAC Sections 116.110(a)(3) and 116.710(a)(1). To ensure that there is no confusion when we use the term ''facility'' in regard to Texas rules, the EPA is providing the explanation given by the TCEQ regarding how TCEQ defines the term. TCEQ has explicitly defined the term ''facility'' in accordance with the definition under the Texas Health and Safety Code Section 382.003(6) and 30 TAC Section 116.10(6). The TCEQ translates EPA's term of ''emission unit'' (generally) to mean ''facility'' under their rules and provides a detailed explanation of the term in its formal comments to the EPA on the EPA's earlier proposed disapproval of the Texas Flexible

[3] ''Account'' for NSR purposes is defined at 30 TAC Section 101.1(1), second sentence, as ''any combination of sources under common ownership or control and located on one or more contiguous properties, or properties contiguous except for intervening roads, railroads, rights-of-way, waterways, or similar divisions.'' This definition is approved as part of the Texas SIP (March 30, 2005 (70 FR 16129)).

Permits Program. The comments are contained in Docket ID No. EPA–R06–OAR–2005–TX–0032 in *www.regulations.gov.* Under Major NSR, EPA uses the term ''emissions unit'' (generally) when referring to part of a ''stationary source''.

A Flexible Permit holder may make a change, through a NSR SIP case-by-case permit amendment (codified in the SIP at 30 TAC Section 116.116(b)) or a Flexible Permit amendment. See submitted 30 TAC Section 116.710(a)(2). In lieu of either of these two options, the Flexible Permit holder may qualify to make the change by obtaining coverage for a minor NSR SIP permit by rule authorization, codified in the SIP at 30 TAC Section 116.116(d).

If the holder of a Flexible Permit wishes to construct a new minor facility at the location where the permit is issued, he may qualify for a Flexible Permit amendment. See submitted 30 TAC Section 116.710(a)(3). This is analogous to the minor NSR SIP process of using a minor NSR SIP Permit by Rule or a minor NSR SIP permit, for authorization to construct a new facility on the site.

Texas already has an approved NSR SIP under Subchapter B, which defines a change to an existing facility as one that would cause a change in the method of control of emissions; a change in the character of the emissions; or an increase in the emission rate of any air contaminant. 30 TAC Section 116.116(b)(1). Such a change is required under the SIP to be authorized under a minor NSR SIP permit amendment. If the change is a decrease in allowable emissions; or any change from a representation in an application, general condition, or special condition in a permit that does not cause a change in the method of control of emissions; a change in the character of emissions; or an increase in the emission rate of any air contaminant (30 TAC Section 116.116(c)(1)), the change may be authorized without public notification requirements through a SIP-approved minor NSR permit alteration or by obtaining coverage under an existing minor NSR SIP approved permit by rule or standard permit. 30 TAC Section 116.116(b) and (d).

The submitted Program at 30 TAC Section 116.721(a) has the same first two SIP-approved definitions for a change to an existing facility: One that would cause either a change in the method of control of emissions or a change in the character of the emissions. It, however, has a different definition for the third type of change. Rather than the change being ''an increase in the emission rate,'' it is a change that is a ''significant increase in emissions.'' Submitted 30 TAC Section 116.718 defines a ''significant increase in emissions.'' First, the increase in emissions must come from a facility with a Flexible Permit and second, there is no significant increase if the increase does not exceed either the emission cap or individual emission limitation.

The submitted Flexible Permit program at 30 TAC Chapter 116, Subchapter G establishes an aggregated emission limit, based upon the application of available technology that limits emissions, as provided under the minor NSR SIP and known as best available control technology (BACT) [4] at expected maximum capacity (or a different limitation based on the emission level that would result from the application of a more stringent required emission control) for each covered facility, i.e., an emission cap is determined. The cap for a specific criteria pollutant addresses emissions from each covered facility with its individually calculated emission rates. The total sum of the covered facilities' calculated emission rates is the emission cap. In other words, the emission cap is a limit on the potential to emit (PTE).

An emission cap established in a Flexible Permit enables the holder to have more operational flexibility than would be allowed under SIP-approved minor NSR Permits, which impose unit-specific mass emission limits. See submitted 30 TAC Section 116.716. Under the submitted 30 TAC Section 116.716(a), Texas may establish an emission cap for a specific pollutant by calculating the total emissions for all of the facilities covered by a Flexible Permit, using the application of minor NSR SIP BACT at expected maximum capacity for each covered facility. Nevertheless, where the existing control for a facility is more stringent than the application of minor NSR SIP BACT, e.g., NSPS, NESHAPS, or a control strategy rule, then that level of control for that facility is used in the calculation methodologies for determining the cap. See submitted 30 TAC Section 116.715(c)(9) and (10). Alternatively, Texas will also set an individual emission limitation in the same Flexible Permit for each pollutant covered by an emission cap for the covered facilities to ensure the protection of human health and the environment as may be required by a state or federal rule. See submitted 30 TAC Section 116.716(b).

In the version of the Flexible Permit program that was the subject of the July 15, 2010, disapproval, the calculation methodologies for the cap and the individual emission limitations included allowing for inclusion of an ''Insignificant Emissions Factor'' (of up to nine percent) in the summation. However, the package submitted for EPA approval that we are acting on today revised the definition of emission cap to omit such a provision. See submitted (and revised with this action) new 30 TAC Section 116.13(3).

Under the submitted Flexible Permit Program, a pollutant's cap must be decreased if one of the facilities (defined by Texas to generally mean an ''emissions unit'') under the Flexible Permit shuts down for longer than 6 months. See submitted 30 TAC Section 116.716(f)(1), first sentence. If a new facility is brought into the Flexible Permit, the cap must be readjusted to accommodate its calculated emission rates. See submitted 30 TAC Section 116.716(f)(3). The cap must be adjusted downward for any facility covered by a Flexible Permit if that facility becomes subject to any new State or Federal regulation. See submitted 30 TAC Section 116.716(f)(4). A readjustment of the cap required by any new State or Federal regulation must be made the next time the Flexible Permit is either amended or altered. If an amendment to a Flexible Permit is not required to meet the new regulation, the permittee must submit a request for a permit alteration within sixty days of making the change, describing how compliance with the new requirement will be demonstrated. See submitted 30 TAC Section 116.716(f)(4), third sentence.

Under submitted 30 TAC Section 116.717, a Flexible Permit may include an implementation schedule for the installation of additional controls to meet an emissions cap for a pollutant. The section also provides that if a schedule to install additional controls is

[4] Texas adopted a revised NSR State rule on July 27, 1972, to add the requirement that a proposed new facility and proposed modification utilize at least best available control technology (BACT), with consideration to the technical practicability and economical reasonableness of reducing or eliminating the emissions from the facility. EPA approved the revised 603.16 into the Texas SIP, presently codified in the Texas SIP at 30 TAC Section 116.111(a)(2)(C). For more information, please see the 74 FR 48450 (September 23, 2009), concerning the Texas Qualified Facilities State Program and the General Definitions. The Texas SIP has been revised since our initial approval of 30 TAC 116.111(a)(2)(C). The Texas PSD Program at 30 TAC 116.160(c)(1)(A) incorporates the Federal PSD BACT definition at 40 CFR 52.21(b)(12). EPA approved the current Texas PSD program provision on September 15, 2010, as revised by the July 16, 2010 SIP submittal. See 75 FR 55978. Upon EPA's September 15, 2010, approval of the Texas PSD SIP submittals, both EPA and Texas interpreted the SIP BACT provision now codified in the SIP at 30 TAC Section 116.111(a)(2)(C) as being a minor NSR SIP requirement for minor NSR permits, and thus applicable to the Texas Minor NSR Flexible Permits Program.

included in the Flexible Permit and a facility subject to such a schedule is taken out of service, the emission cap contained in the Flexible Permit will be readjusted to reflect the period the unit is out of service. Unless a special provision in the Flexible Permit specifies the method of readjustment of the emission cap, the facility must obtain a permit amendment or alteration, as appropriate.

## III. What action is EPA proposing?

The EPA is proposing to conditionally approve the Texas Flexible Permit Program, as submitted by Texas on October 21, 2013, and as contained in 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification. This action follows a decision made by the Fifth Circuit Court on August 3, 2012, which vacated EPA's previous disapproval and remanded it back to the EPA for further reconsideration. *Texas* v. *EPA,* 690 F.3d 670 (Fifth Cir. 2012). The present submittal includes the original SIP package dated November 29, 1994, which was addressed by the court, and certain specified revisions as submitted by TCEQ on October 21, 2013. In addition, the following regulations under Chapter 116 including 30 TAC Section 116.110(a)(3) on July 22, 1998, and the definition in 30 TAC Section 116.10(11)(F) submitted on July 22, 1998, for ''modification of existing facility'' are included as part of this package. EPA is also proposing to conditionally approve the public participation applicability provisions at 30 TAC Section 39.402(a)(4) and (a)(5) submitted on July 2, 2010.

In order to better understand how the submitted program will be implemented, EPA asked for an interpretive letter from the State detailing how certain aspects of the program will be operated. Based upon our evaluation of the submittals and further informed by the letter, EPA has concluded that the Flexible Permit Program as submitted October 21, 2013, in conjunction with the conditions included in the December 9, 2013, commitment letter, does meet the requirements of the CAA section 110(a) which requires each State to include a Minor NSR program in its SIP that meets the 40 CFR part 51 Subpart I requirements, including legally enforceable procedures for a minor NSR program.[5]

Table 2 below summarizes each regulatory citation that is affected by this action.

TABLE 2—SUMMARY OF EACH REGULATION THAT IS AFFECTED BY THIS ACTION

| Section | Title | Date submitted to EPA as SIP amendment | Date adopted by State | Comments |
|---|---|---|---|---|
| **Chapter 39: Public Notice** | | | | |
| Section 39.402 ..... | Applicability to Air Quality Permits and Permit Amendments. | July 2, 2010 | June 2, 2010 | 30 TAC Section 39.402(a)(4) and 39.402(a)(5) specific to flexible permits only. |
| **Chapter 116: Control of Air Pollution by Permits for New Construction or Modification Subchapter A: Definitions** | | | | |
| Section 116.10 ..... | General Definitions .... | 03/13/1996 ... | 2/14/1996 ..... | Definition of ''modification of existing facility'' at 30 TAC Section 116.10(F). |
| | | 07/22/1998 ... | 6/17/1998 ..... | Definition of ''modification of existing facility'' at 30 TAC Section 116.10(9)(F). |
| | | 9/4/2002 ..... | 8/21/2002 ..... | Redesignation of the Definition of ''modification of existing facility'' from 30 TAC Section 116.10(9)(F) to 116.10(11)(F). |
| | | 10/5/2010 ..... | 9/15/2010 ..... | Renumbered definition (9)(E) for ''modification of existing facility''. |
| Section 116.13 ..... | Flexible Permit Definitions. | 11/29/1994 ... | 11/16/1994 ... | Initial adoption. |
| | | 7/22/1998 ..... | 6/17/1998 ..... | Resubmitted 116.13 definitions for (1) emission cap-emission limit, (2) expected maximum capacity, and (3) individual emission limitation. |
| | | 10/21/2013 ... | 12/14/2010 ... | • Revised definition of ''emission cap'' at 30 TAC Section 116.13(1).<br>• Revised definition of ''individual emission limitation'' at 30 TAC Section 116.13(3) and (5). Deleted reference to ''insignificant factor'' formally found in 30 TAC Section 116.13. |
| **Subchapter B: New Source Review Permits Division 1: Permit Application** | | | | |
| Section 116.110 ..... | Applicability ..... | 11/29/1994 ... | 11/16/1994 ... | 30 TAC Section 116.110(a) specific to flexible permits only. |
| | | 7/22/1998 ..... | 6/17/1998 ..... | Revised 30 TAC Section 116.110(a)(3) applicability criteria. |
| **Subchapter G: Flexible Permits** | | | | |
| Section 116.710 ..... | Applicability ..... | 11/29/1994 ... | 11/16/1994 ... | Initial adoption. |

[5] This submittal does not include the submitted rules for implementing Section 112(g) of the Clean Air Act that were identified and returned by the EPA to the TCEQ on June 29, 2011. This submittal also does not include those rules that were withdrawn by the TCEQ as identified in the October 21, 2013, submittal cover letter. EPA's position on section 112(g) of the CAA is that the EPA does not delegate section 112(g) requirements in our MACT delegations, nor do we approve them into the SIP. Instead, the State must certify to EPA that the state program satisfies all applicable requirements.

TABLE 2—SUMMARY OF EACH REGULATION THAT IS AFFECTED BY THIS ACTION—Continued

| Section | Title | Date submitted to EPA as SIP amendment | Date adopted by State | Comments |
|---|---|---|---|---|
| | | 7/22/1998 | 6/17/1998 | Revised 30 TAC Section 116.710 subsections (a), (b), (c), and (d)—Applicability criteria. |
| | | 9/11/2000 | 8/9/2000 | Resubmittal 30 TAC Section 116.710. |
| Section 116.711 | Flexible Permit Application. | 11/29/1994 | 11/16/1994 | Initial adoption. |
| | | 7/22/1998 | 6/17/1998 | Revised 30 TAC Sections 116.711 (1)–(13)—Flexible permit application requirements. |
| | | 4/12/2001 | 3/7/2001 | Resubmittal 30 TAC Section 116.711. |
| | | 9/4/2002 | 8/21/2002 | Revised 30 TAC Sections 116.711 (8), (9), (10), and (11). |
| | | 10/21/2013 | 12/14/2010 | Revised 30 TAC Section 116.711(2)(M) [introductory text], and paragraphs (iv) and (vii). It was submitted in the package as 30 TAC Section 116.711(13)(D) which requires permit applicants to provide a description of EPNs included in emission cap and 30 TAC Section 116.711(13)(E)(vii) which ensures PSD terms and conditions are retained in the flexible permit. |
| Section 116.714 | Application Review Schedule. | 11/29/1994 | 11/16/1994 | Initial adoption. |
| | | 7/22/1998 | 6/17/1998 | Revised 30 TAC Section 116.714. |
| Section 116.715 | General and Special Conditions. | 11/29/1994 | 11/16/1994 | Initial adoption. |
| | | 7/22/1998 | 6/17/1998 | Revised 30 TAC Section 116.715 subsections (a) and (c)(1)–(10)—General conditions applying to all flexible permit holders. |
| | | 9/11/2000 | 8/9/2000 | Revised 30 TAC Section 116.715 subsections (a)–(d). |
| | | 4/12/2001 | 3/7/2001 | Revised 30 TAC Sections 116.715(a) and (c)(3)(A), (c)(3)(B), and (c)(3)C). |
| | | 9/4/2002 | 8/21/2002 | Revised 30 TAC Section 116.715 subsections (c)(1) and (c)(4). |
| | | 9/25/2003 | 8/20/2003 | Revised 30 TAC Section 116.715 subsection (c)(3)(C)(9). |
| | | 10/21/2013 | 12/14/2010 | • Revised 30 TAC Sections 116.715(c)(5)(A) & (B)—monitoring requirements must be specified in permits for compliance with emission caps.<br>• Revised 30 TAC Section 116.715(c)(6)(A)(i) & (ii)—recordkeeping for demonstrating emission cap and individual emission limitation calculations.<br>• Revised 30 TAC Section 116.715(d)(1)—monitoring must demonstrate compliance based on sound science. |
| Section 116.716 | Emission Caps and Individual Emission Limitations. | 11/29/1994 | 11/16/1994 | Initial adoption. |
| | | 10/21/2013 | 12/14/2010 | Revised 30 TAC Sections 116.716(a), 116.716(c), 116.716(d), and 116.716(e) on establishing an emission cap and individual emission limits. |
| Section 116.717 | Implementation Schedule for Additional Controls. | 11/29/1994 | 11/16/1994 | Initial adoption. |
| Section 116.718 | Significant Emission Increase. | 11/29/1994 | 11/16/1994 | Initial adoption. |
| Section 116.720 | Limitation on Physical and Operational Changes. | 11/29/1994 | 11/16/1994 | Initial adoption. |
| Section 116.721 | Amendments and Alterations. | 11/29/1994 | 10/19/1994 | Initial adoption. |
| | | 7/22/1998 | 6/17/1998 | Revised 30 TAC Sections 116.721(a), (b)(2), (d)(1), and (d)(2)—Amendments and alterations for flexible permits. |
| | | 9/11/2000 | 8/9/2000 | Resubmittal 30 TAC Section 116.721. |
| Section 116.722 | Distance Limitations | 11/29/1994 | 10/19/1994 | Initial adoption. |
| | | 9/11/2000 | 8/9/2000 | Revised reference citation in Section. |
| Section 116.730 | Compliance History | 11/29/1994 | 10/19/1994 | Initial adoption |
| | | 10/21/2013 | 12/14/2010 | 30 TAC Section 116.730 withdrawn. |
| Section 116.740 | Public Notice and Comment. | 11/29/1994 | 10/19/1994 | Initial adoption. |
| | | 7/22/1998 | 6/17/1998 | Revised Section. |
| | | 10/25/1999 | 9/2/1999 | Revised 30 TAC Section 116.740(a). |
| | | 10/21/2013 | 12/14/2010 | • Revised resubmittal.<br>• 30 TAC Section 116.740(b) withdrawn. |
| Section 116.750 | Flexible Permit Fee | 11/29/1994 | 10/19/1994 | Initial adoption |
| | | 7/22/1998 | 6/17/1998 | Revised 30 TAC Sections 116.750(b)–(d). |
| | | 9/11/2000 | 8/9/2000 | Revised 30 TAC Section 116.750(d). |
| | | 10/4/2002 | 9/25/2002 | Revised 30 TAC Section 116.750(b)–(c). |

TABLE 2—SUMMARY OF EACH REGULATION THAT IS AFFECTED BY THIS ACTION—Continued

| Section | Title | Date submitted to EPA as SIP amendment | Date adopted by State | Comments |
|---|---|---|---|---|
| | | 10/21/2013 ... | 12/14/2010 ... | Revised resubmittal. |
| Section 116.760 ..... | Flexible Permit Renewal. | 11/29/1994 ... | 10/19/1994 ... | Initial adoption. |
| Section 116.765 ..... | Compliance Schedule | 10/21/2013 ... | 12/14/2010 ... | Submittal 30 TAC Section 116.765(b) and (c). |

*A. What is a conditional approval?*

Section 110(k) of the Act governs EPA's actions addressing SIP submissions. Where EPA finds that a SIP submission is not fully approvable, we may choose to use a conditional approval as provided under Section 110(k)(4). In this case EPA may conditionally approve the plan based on a commitment from the State to adopt specific corrections to the Flexible Permit Program by a date certain, but no later than 1 year after the approval of the revision. Guidance on the use of conditional approvals was addressed by EPA in 1992 in a memorandum from John Calcagni.[6] This guidance was followed in the development by the TCEQ of their submittal of October 21, 2013 and was the basis for their detailed letter of commitment. A copy of TCEQ's letter of commitment and the Calcagni memo are available in the docket to this rulemaking. Upon TCEQ fully satisfying their commitment and subsequent final action by EPA, the Flexible Permit Program for the first time will become a fully approved federally enforceable requirement in the Texas State Implementation Plan. The TCEQ, in its letter of December 9, 2013, committed to adopt by November 30, 2014, certain changes to the rules contained in the SIP submittal.

Once EPA determines that all the conditions in the commitment letter have been met, EPA will publish in the **Federal Register** a determination that converts the conditional approval to a full approval and provides a copy of the Flexible Permit Program as revised to meet the conditions. However, if the State fails to submit a SIP revision reflecting its December 9, 2013, commitments by November 30, 2014, or if EPA determines that the submitted SIP revision does not address the commitments, then in accordance with 110(k)(4) of the CAA, the conditional approval converts to a disapproval action. In that case, EPA would issue a letter to the TCEQ converting the conditional approval of the Flexible Permit Program to disapproval. Because the Flexible Permit Program is a discretionary variation of the SIP approved minor program and was not submitted to address a mandatory requirement of the Act, disapproval of the program would not trigger sanctions under Section 179(b) or start a Federal Implementation Plan clock.

*B. What are the commitments?*

TCEQ provided a commitment letter on December 9, 2013, to EPA that provides that the commission will subsequently submit amended rules that are consistent with the rulemaking requirements of the Texas Administrative Procedure Act. This action is necessary because some of the rules were repealed and readopted in 1998, and amendments to the rules were adopted in the 1999 to 2003 timeframe. The rulemaking would also include the repeal of text adopted in 2010 but not part of the submission by the Commission on September 24, 2013. More specifically, Texas will also make rule changes to ensure that all regulatory citations in the package are labeled and referenced correctly and placed in proper sequence. Without the renumbering and referencing effort, incorrect references in the rules could result in applicable requirements being overlooked and not being incorporated into Flexible Permits during their preparation or modification. Further, the rules could cite to incorrect requirements not applying to the entities regulated through the Flexible Permit Program. The TCEQ has committed to providing a SIP submittal by November 30, 2014, that will reformat, reorganize and renumber the Flexible Permit Program into a cohesive rule that will ensure that the rules are properly structured within and according to the rulemaking requirements of the Texas Administrative Procedure Act and the Texas Administrative Code. It will also include the repeal of text adopted in 2010 that was not part of the submittal adopted by the Commission on September 24, 2013. This commitment letter is available in the docket for this rulemaking. All the necessary substantive provisions of the flexible permit program were included in the submissions and the conditions address formatting and style requirements in state law. The changes that Texas will be making will not materially alter the submitted program described in this proposal.

## IV. EPA's Evaluation of the Texas Flexible Permit Program as a Minor NSR Program

The Act at Section 110(a)(2)(C) requires states to develop and submit to EPA for approval into the state SIP, preconstruction review programs applicable to new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the New Source Review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the National Ambient Air Quality Standards (NAAQS), i.e., ''attainment areas'', as well as areas where there is insufficient information to determine if the area meets the NAAQS, i.e., ''unclassifiable areas.'' The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS, i.e., ''nonattainment areas.'' The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, more than certain major source thresholds and thus do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located.

EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR 51.160–51.166. Regulations specific to minor NSR programs are contained in 40 CFR 51.160–51.164. In addition, there are several provisions in 40 CFR Part 51

[6] John Calcagni's July 1992, Memorandum, ''*Processing of State Implementation Plan (SIP) Submittals*'', to Directors.

that apply generally to all SIP revisions. The TCEQ has developed the Flexible Permit Program as a component of the Texas Minor NSR program; therefore, we evaluated the Texas Flexible Permit Program as submitted in October 21, 2013, and the commitment letter against the federal requirements for minor NSR programs. EPA's evaluation is also informed by an interpretive letter sent by TCEQ on December 9, 2013, clarifying certain aspects of the program. In an earlier **Federal Register** proposed action, EPA articulated its position on the use of interpretive letters in evaluating SIPs:

EPA believes that the use of interpretive letters to clarify perceived ambiguity in the provisions in a SIP submission is a permissible and sometimes necessary approach under the CAA. Used correctly, and with adequate documentation in the **Federal Register** and the docket for the underlying rulemaking action, reliance on interpretive letters can serve a useful purpose and still meet the enforceability concerns of the Petitioner. Regulated entities, regulators, and the public can readily ascertain the existence of interpretive letters relied upon in the EPA's approval that would be useful to resolve any perceived ambiguity. By virtue of being part of the stated basis for the EPA's approval of that provision, the interpretive letters necessarily establish the correct interpretation of any arguably ambiguous SIP provision. In addition, reliance on interpretive letters to address concerns about perceived ambiguity can often be the most efficient and timely way to resolve concerns about the correct meaning of regulatory provisions. Both air agencies and the EPA are required to follow time- and resource-intensive administrative processes in order to develop and evaluate SIP submissions. It is reasonable for the EPA to *exercise* its discretion to use interpretive letters to clarify concerns about the meaning regulatory provisions, rather than to require air agencies to reinitiate a complete administrative process merely to resolve perceived ambiguity in a provision in a SIP submission. In particular, the EPA considers this an appropriate approach where reliance on such an interpretive letter allows the air agency and the EPA to put into place SIP provisions that are necessary to meet important CAA objectives and for which unnecessary delay would be counterproductive. (78 FR 12460, 12475, February 22, 2013). Texas' interpretive letter is in the docket for this action and is discussed throughout this notice.

As we stated above, 40 CFR 51.160 establishes the enforceable procedures that all minor NSR programs must include. We will address the specific requirements for enforceability in Section A below. 40 CFR 51.161 establishes the public notice requirements for minor NSR programs. We will address the public notice requirements more fully in a following Section B. Sections 51.160–51.164 require that a SIP revision demonstrate that the adopted rules will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. We will address the specific requirements for permitting activities that ensure attainment more fully in a following Section C.

EPA notes that in response to its final disapproval on the Flexible Permits Rule on July 15, 2010, the TCEQ adopted, on December 14, 2010, revised Sections of the Texas Administrative Code which resulted in changes to Chapter 116. In recent discussions with EPA, the State agreed to submit for our consideration portions of those rules in conjunction with the prior submittal addressed in EPA's July 15, 2010, action. A discussion of the portion of the applicable December 14, 2010, rule that was included in the submittal package is also included in the section A.(1–5) below.

*A. Federal Requirements for Enforceability of the Minor NSR Program*

The Federal requirements for enforceability are found in 42 U.S.C. 7410(a)(2)(A) and 42 U.S.C. 7410(a)(2)(C) as interpreted by the EPA guidance discussed below. The EPA has several regulations that address all SIPs and SIP revisions. In addition to the generally applicable rules discussed below, the requirement for enforceability of a minor NSR program is found at 40 CFR 51.160. This rule specifically requires the state or local agency to have the authority to prevent the construction of a facility or modification that will cause a violation of applicable portions of the control strategy or interfere with attainment or maintenance of a NAAQS. To accomplish this goal, the state's minor NSR program must include the means by which the state agency will review proposed new construction or modification projects to determine that such projects will not interfere with the control strategy or cause a violation of a NAAQS. The minor NSR program must include the following in accordance with 40 CFR 51.160(c):

- The minor NSR program must provide for the submission, by the owner or operator of the building, facility, structure or installation to be constructed or modified, such information on the nature and amounts of emissions to be emitted by it or emitted by associated mobile sources; and the design, construction and operation of such facility, building, structure, or installation as may be necessary to allow the permitting authority to make a determination on approvability.
- The minor NSR program must provide that approval of any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.
- The minor NSR program must include procedures to identify the types and sizes of facilities, buildings, structures, or installations which will be subject to review. The minor NSR program must also discuss the basis for determining which facilities will be subject to review.
- The minor NSR program must also discuss the air quality data and the dispersion or other air quality modeling used to make approval decisions.

The Court in its Opinion stated that in disapproving the Texas Flexible Permit Program, the EPA failed to explain or tie replicability, clarity and, in general, elements of the enforcement guidance to standards provided for in the CAA. See, 690 F.3d 670, 683–4. 42 U.S.C. 7410(a)(2) provides that a SIP must include enforceable emission limitations. It is this CAA requirement that the SIP be enforceable that provides the legal basis for requiring that a program meet criteria necessary for enforceability. Enforceability is required by the Act and without it the EPA, the states, and the citizens who wish to determine whether or not a regulated entity is in compliance, and then to enjoin any violations, will find it difficult to take action to ensure compliance. Being able to enforce permits and rules adequately provides interested parties the ability to return regulated entities to compliance. The collection of penalties both penalizes the offender and provides deterrence of future violations. Without adequate enforceability, EPA cannot ensure that a program submitted to be approved into the SIP will be protective of the NAAQS. See, 42 U.S.C. 7410(l). Minor sources have the potential to impact the NAAQS. EPA acknowledged this in the 1986 rulemaking establishing the current version of 40 CFR 51.160–164 (the minor source rules). The EPA stated that ''The very fact that such [minor] sources are subject to review indicates that it would be appropriate to require that EPA be notified of permitting actions on such sources [minor] for oversight purposes. Moreover, a large number of minor sources could have a significant cumulative effect on air quality.'' See, 51 FR 40656, 40658

November 7, 1986. These sources [7] have historically included some of the largest refinery and petrochemical companies in the State. These large sources very frequently have the need for minor NSR changes to their permits. The Appendix to the TSD contains a list of companies provided by the TCEQ on December 18, 2013, that currently have or historically had coverage under a flexible permit issued prior to the rules becoming SIP approved.

In addition to ensuring protection of the NAAQS, enforceability is required by the Act and in several regulations that are applicable to minor source programs as well as to all SIPs and SIP revisions. 42 U.S.C. 7410(a)(2) provides that a SIP must include enforceable emission limitations and control measures, coupled with methods for maintaining and analyzing data on air quality. EPA's regulations implementing this provision require that: Each plan must set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in (1) A violation of applicable portions of the control strategy; or (2) Interference with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring State. In addition, 42 U.S.C. 7410(a)(2)(C) specifically provides that a program be established to provide for the enforcement of emission limitations. While the statute provides for considerably broader discretion for States to craft minor source programs, it does not in any way distinguish the requirement for enforceability between major and minor source programs. Indeed, since (as noted above), very large major sources obtain many minor source permits for construction and modification of emissions units, the collection of such permits at such sources should reflect similar levels of enforceability. Congress recognized this in establishing the Title V operating permit program, which collects all permits into a single comprehensive document, and requires the permitting authority to remedy past flaws related to permit enforceability. In addition, the following regulatory provisions lay out the framework for requirements for enforceability in SIPs, and in particular minor source programs. Certainly the statute makes no such distinction nor do the regulations. 40 CFR 51.160 provides in relevant part that each plan must set forth legally enforceable procedures that enable the State or local agency to determine whether there is violation of applicable portions of the control strategy. 40 CFR 51.281 provides, in relevant part, that emission limitations and other measures adopted by the state as rules and regulation must be enforceable by the State Agency. 40 CFR 51.212(c) provides for an enforceable test method for each emission limitation. The Court discussed only the requirements found in 40 CFR 51.160–164, relating specifically to minor source permitting as applicable in this matter. However, all SIPs and SIP revisions must also comply with some additional requirements, found in part 51 such as Subparts F, K, L and O. Thus, enforceability is a significant element in the Act and our regulations.

EPA has, from time to time, also issued guidance that provides the Agency's interpretation of what it means to be enforceable under the Act and implementing regulations.

One of the central documents that sets forth our interpretation is the September 23, 1987, Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, and Thomas L. Adams Jr., Assistant Administrator for Enforcement and Compliance Monitoring, entitled ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency.'' [8] In the memorandum, we explain that submitted rules that are clearly worded, clear as to who must comply, and explicit in their applicability to regulated sources are appropriate means for achieving the statutory enforcement requirement. Appropriate testing, recordkeeping, reporting, and monitoring provisions are necessary to establish how compliance will be determined and be sufficient to ensure that the NAAQS and PSD increments are protected. Attached to this memorandum was an implementation guidance which included a section entitled ''SIP APPROVABILITY CHECKLIST—ENFORCEABILITY'' regarding how to specifically evaluate proposed rules and ensure they are enforceable.

On November 3, 1993, EPA's John S. Seitz, Director, Office of Air Quality Planning and Standards, issued a memorandum titled ''Approaches to Creating Federally-Enforceable Emissions Limits.'' While its purpose was to give guidance as to how permitting authorities could create permit programs that would allow sources that would otherwise be major sources to be considered ''minor'' for the purposes of title V permitting and various other requirements of the Act, it also further articulates EPA's interpretation of statutes and regulations as it relates to creating emissions limits that are legally and practically enforceable. It is EPA's longstanding interpretation of 42 U.S.C. 7410(a)(2) of the CAA that in general federal enforceability has two parts: legal enforceability and practical enforceability.

A requirement is ''legally enforceable'' if some authority (as well a citizen) has the right to enforce the restriction. Practical enforceability for a source-specific permit will be achieved if the permit's provisions specify: (1) A technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); and (3) the method to determine compliance, including appropriate monitoring, recordkeeping, and reporting. For rules and general permits that apply to categories of sources, practical enforceability additionally requires that the provisions: (1) Identify the types or categories of sources that are covered by the rule; (2) where coverage is optional, provide for notice to the permitting authority of the source's election to be covered by the rule; and (3) specify the enforcement consequences relevant to the rule. ''Enforceable as a practical matter'' will be achieved if a requirement is both legally and practically enforceable.[9] The above cited guidance and **Federal Register** notices demonstrate that EPA has consistently interpreted enforceable requirements of the CAA in the manner explained above, i.e., that they must be both legally and practically enforceable. We believe the Flexible Permit program before us today meets our interpretation of enforceable under the CAA.

The provisions from the October 21, 2013 submittal needed to ensure legal and practical enforceability are discussed in numbers 1–5 below.

1. Identifying the New Facilities and/or Modifications for Inclusion in a Flexible Permit

One key feature of an enforceable minor NSR program is the ability to

[7] These sources include minor sources as well as major sources seeking minor modifications to their facilities.

[8] See 57 FR 13498, April 16, 1992. This is the General Preamble to the 1990 CCA Amendments which was meant to act as guidance for the State in making revisions to their NSR programs. It references the above memorandum as establishing the enforceability criteria for writing rules and permitting. See also Pgs, 13541, 13548.

[9] See 67 FR 80186, 80190–80191 December 31, 2002.

easily identify the facilities and modifications subject to the program. See, 40 CFR 51.160(e). For the Flexible Permit program, the establishment and identification of the facilities subject to the emission cap is crucial to proper implementation of the program. To provide for legally enforceable emission caps, the TCEQ adopted amendments to 30 TAC Section 116.711(2)(M) on December 14, 2010, and included them in the package submitted for EPA approval on October 21, 2013. The submitted package requires permit applicants provide a complete description of the facilities (with their individually defined emission point numbers) included in an emissions cap. The package also allows a permit applicant to establish an emission cap for all facilities at an account, including every facility at the account, or to establish an emission cap comprised of a designated group of facilities at the account. Section 116.716(a) allows permit applicants full flexibility to designate facilities for inclusion in an emission cap as they see fit, without restriction on the type or location of the facility, as long as it (1) complies with the definition of account and 30 TAC Section 116.716(a) as submitted; (2) provides that emission caps be established for a pollutant for all facilities at an account or a designated group of facilities at an account. Finally, 30 TAC Section 116.716(c) as submitted, includes text to ensure that the rules include procedures for establishing an emissions cap. See 35 TexReg 11936–11941.

2. Inclusion of Appropriate Monitoring and Recordkeeping Requirements in Flexible Permits

In addition to establishing the facilities and modifications subject to the minor NSR program, the SIP must require sufficient monitoring, recordkeeping, and reporting (MRR) to demonstrate that the source or modification as permitted will not result in a violation of the control strategy or an applicable NAAQS and is enforceable. One of the rationales for our original disapproval was that the program afforded excessively broad discretion to the director regarding whether or not to include MRR conditions in a Flexible Permit. See, 75 FR 41312, 413213. Subsequent to the Fifth Circuit's vacatur of our disapproval of the MRR and director's discretion provisions in the original Flexible Permit program, EPA, in a separate rulemaking action, has more clearly articulated the Agency's long standing interpretation of the CAA as it relates to the use of director discretion in SIPs.

On February 22, 2013, in a proposed action involving how excess emissions would be treated in state rules by sources during periods of startup, shutdown, or malfunction (SSM), EPA extensively discusses the use of director's discretion in SIPs. For the full discussion of this issue please see 78 FR 12460, February 22, 2013, and the accompanying SSM legal memo: ''Memorandum to Docket EPA–HQ–OAR–2012–0322 Statutory, Regulatory, and Policy Context for this Rulemaking February 4, 2013.'' In these documents EPA articulates the rationale for its longstanding interpretation that the CAA does not allow ''director's discretion'' provisions in SIPs if they provide unbounded discretion to determine what requirements apply to sources, in ways that would amount to case-specific revisions of the SIP without meeting the statutory requirements of the CAA for SIP revisions. See, 78 FR 12460, 12474.

The EPA has explained that director's discretion provisions can be acceptable if such provisions are sufficiently specific, provide for sufficient public process, and are sufficiently bounded, so that it is possible to anticipate at the time of the EPA's approval of the SIP provision how that provision will actually be applied and that the pre-authorized exercise of director's discretion will not interfere with other CAA requirements, such as providing for attainment and maintenance of the NAAQS. See, 78 FR 12460, 12485. In the EPA's judgment, the revised Flexible Permit Rule before us today is sufficiently bounded, provides for public participation, protects the NAAQS, and is enforceable.

The disapproved package had provided that a source should have provisions for measuring emissions of air contaminants ''as determined by the Executive Director,'' and imposed no additional substantive requirements for such measurements and did not prevent the Director from exempting the source from any requirements at all. Thus, it did not comport with the requirements specified in EPA's recent notice. The revised Flexible Permit Rule, as submitted in October 2013, does not contain any provision that could constitute or authorize a complete variance or an exemption from monitoring. The State in its interpretive letter clearly confirms that its rules do not allow for an exemption from monitoring requirements. The requirements for monitoring are general in nature but are sufficiently bounded to be approvable. In particular, TCEQ adopted amendments to 30 TAC Section 116.715(d)(1) to satisfy EPA concerns about the exercise of director's discretion. Section 116.715(d)(1) provides that the ''monitoring system must accurately determine all emissions of the pollutants in terms of mass per unit of time. Any monitoring system authorized for use in the permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation.'' As explained in the TCEQ interpretive letter, this monitoring condition clearly constrains the director's discretion. As such, it is consistent with the guidelines for director's discretion provisions set forth in the EPA guidance just described.

The newly submitted rule tracks very closely with the monitoring provisions set forth in EPA's major source Plantwide Applicability Limitation (PAL) provisions in the federal PSD regulations (PAL). EPA's PSD PAL provisions at 40 CFR 52.21(aa)(12) specify monitoring requirements for PAL permits and requires that all monitoring systems authorized for use in a PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation.

Moreover, in our original disapproval for the Flexible Permit Program, we cited to the PAL rule as an appropriate way to for the director to establish monitoring requirements.[10] As noted above, TCEQ also submitted an interpretive letter clarifying how this provision in the program operates and demonstrates it is consistent with EPA requirements. In sum, these provisions effectively impose necessary substantive requirements on MRR provisions.

The newly submitted Flexible Permit Program expands the MRR provisions to ensure enforceability of the program. 30 TAC Section 116.715(c)(5)(A) requires each flexible permit to specify requirements for monitoring or demonstrating compliance with emission caps and individual emission limits in the flexible permit. 30 TAC Section 116.715(c)(5)(B) requires each flexible permit to specify emission calculation methods for calculating annual and short term emissions for each pollutant. We find that these provisions of the Flexible Permit Program were included in the revised SIP submission by the TCEQ on October 21, 2013, See, 35 TexReg 11938–11939. These provisions establish that the overall program, and in particular the MRR provisions, provide for sufficient public process, and are sufficiently

[10] See, 75 FR 41312, 41317.

bounded. It is possible to anticipate how the provision will actually be applied and that the pre-authorized exercise of director's discretion will not interfere with other CAA requirements. They also ensure that the limits on director's discretion are legally enforceable. See 40 CFR 51.160 (requiring that minor source program include enforceable procedures.).

3. Additional Elements Specific to Emissions Caps

EPA has also concluded that the program, as submitted, contains other specialized provisions needed to ensure enforceability. Once the cap is established the facilities are then able to make changes without permit revisions provided the emissions are below the established emissions caps. The TCEQ has consistently defined the flexible permit program as a new type of minor NSR permit program which functions as an alternative to the traditional preconstruction permits that are authorized in Chapter 116, Subchapter B, NSR Permits. The TCEQ states that flexible permits were designed to exchange flexibility for further emission reductions without relaxation of unit specific control requirements. In its submittal, the TCEQ has included provisions in 30 TAC Section 116.715(c)(5)(A) that satisfy the requirements that each flexible permit specify requirements for monitoring or demonstrating compliance with emission caps and individual emission limits in the flexible permit; 30 TAC Section 116.715(c)(5)(B) as submitted satisfies the requirement that each flexible permit specify emission calculation methods for calculating annual and short term emissions for each pollutant; and 30 TAC Section 116.715(d)(1) to satisfy the requirements concerning accountability/enforceability. Each of these amendments to the Flexible Permit Program was submitted as a SIP revision by the TCEQ on October 21, 2013. See, 35 TexReg 11938–11939.

4. Provisions To Ensure the Flexible Permit Program Is a Minor NSR Program

Because the Flexible Permit program can be used for both true minor sources and for minor modifications at existing major sources, the program must include provisions to ensure that major NSR requirements are protected and that the Flexible Permit Program cannot be used to circumvent the requirements of either PSD or NNSR review. The TCEQ adopted provisions on December 14, 2010, to further clarify the major NSR permitting programs. The TCEQ adopted amendments to 30 TAC Section 116.711(2)(M)(vii) to specify that the flexible permit application must identify any terms, conditions, and representations in any Subchapter B permit which will be superseded by or incorporated under a flexible permit and provide an analysis of how the conditions and control requirements of a Subchapter B permit will be carried forward in the proposed flexible permit. Texas revised 30 TAC Section 116.716(c)(2) to require facilities subject to lowest achievable emission rate (LAER) in accordance with Subchapter B, be included in a separate emissions cap or provided with individual emission limitations. This provision ensures that sources subject to LAER are fully controlled as required by federal NSR regulations. Each of these amendments to the Flexible Permit Program was submitted as a SIP revision by the TCEQ on October 21, 2013. Each of these amendments to the Flexible Permit Program ensures that the program is for minor NSR actions and that for any minor amendments to a major source, the source will retain its major source requirements (i.e., cannot be used to circumvent the major source requirements). Our evaluation of this issue is also informed by the Fifth Circuit Court of Appeals decision in *Texas* v. *EPA,* 690 F3d 670, (5th Cir 2013) in which the Court overturned our disapproval of the rule. One of the major rationales of our earlier disapproval was that the Program might allow major sources to evade Major NSR. The EPA found that the Flexible Permit Program ''has no express regulatory prohibition clearly limiting its use to Minor NSR and has no regulatory provision clearly prohibiting the use of this submitted Program from circumventing the Major NSR SIP requirements.'' See, 75 FR 41312, 41,313. The Court dismissed EPA's concern and expressly ruled that this was a program limited to minor sources only. ''The Flexible Permit Program does not allow Major NSR evasion because it affirmatively requires compliance with Major NSR''. *Texas* v. *EPA,* 690 F3d 670, 678. TCEQ included, as part of their October 21, 2013, submittal 30 TAC Sections 116.711(8)&(9) which require compliance with PSD and Nonattainment review if it is found that those provisions apply.

5. Provisions To Ensure the Flexible Permit Program Demonstrates Compliance

An emissions cap program such as the Flexible Permit Program must include provisions for calculating compliance on a 12-month rolling average and against applicable short term limits in order to meet the requirement of Section 302(k) of the CAA that the source be able to demonstrate continuous compliance. Appropriate emission calculations will ensure that permit conditions are protective of the control strategy and the applicable NAAQS. To provide for this, the TCEQ submitted amendments to the Flexible Permit Program on October 21, 2013, to 30 TAC Section 116.715(c)(5) to address monitoring, calculations, and equivalency of methods so that each flexible permit shall specify requirements for monitoring or demonstrating compliance with emission caps and individual emission limits in the flexible permit and revised 30 TAC Section 116.715(c)(6)(A)(i) so that emission caps and individual emission limitation calculations are based on a 12-month rolling average and emission caps and individual emission limitation calculations correspond to any short term emission limitations.

*B. Federal Requirements for Public Notice of Minor NSR Permitting*

The requirements for public notice of minor NSR permitting are outlined at 40 CFR 51.160 and 51.161. The legally enforceable approval procedures for Minor NSR programs at 40 CFR 51.160 must require the permitting authority to provide opportunity for public comment on information submitted by sources and the agency's analysis of the effects of the proposed source on ambient air, including its proposed approval or disapproval. See, 40 CFR 51.161(a). The opportunity for public comment must include, at a minimum, a 30-day comment period on the information submitted by the applicant and the permitting authority's analysis of the effect of the proposed application on air quality. This information must be noticed by prominent advertisement in the area affected by the proposed source and available for public inspection in at least one location in the area affected. See, 40 CFR 51.161(b).

1. Overview of the Texas Public Participation Process for Applications for New Flexible Permits and Flexible Permit Amendments

The Texas public participation process covers the variety of air quality permit applications processed by the TCEQ including applications for permits for new major sources or modifications subject to PSD or NNSR requirements and minor NSR permit actions such as Flexible Permits. EPA has separately reviewed and approved the public participation process for major sources and modifications subject to PSD/NNSR requirements, PAL permit

authorizations at existing major sources, new minor sources or minor amendments, and permit renewals. See our final rule dated January 6, 2014, approving the Texas public participation requirements for these permit actions as consistent with the requirements of the CAA and 40 CFR 51.160–51.166. See 79 FR 551. In today's action we are only reviewing the Texas public participation program specific to applications for new and amended Flexible Permits pursuant to Chapter 116, Subchapter G. The public participation requirements for Flexible Permits are found at 30 TAC Section 116.740, which requires any applicant for a new Flexible Permit or amendment to a Flexible Permit to comply with the requirements established in Chapter 39 related to Public Notice. Among other Sections that apply to both flexible permit applications and other applications, Chapter 39 separately applies the public participation process to applications for new Flexible Permits at 30 TAC Section 39.402(a)(4) and applications for amendments to a Flexible Permit at 30 TAC Section 39.402(a)(5). Because the Flexible Permits program is a minor NSR authorization, our evaluation of the public participation specific to flexible permits will be based on minor NSR public participation requirements of 40 CFR 51.161.

The following process is used to publish notice of an application for a new Flexible Permit or an amendment to a Flexible Permit.:

1. Applicant submits air quality permit application for new or amended Flexible Permit to TCEQ. See 30 TAC Section 116.711.

2. TCEQ reviews the application and determines whether the application is administratively complete. During this process, the TCEQ has 90 days to determine the application is complete or request additional information. See 30 TAC 116.714, which cross-references the requirements at30 TAC Section 116.114(a)(1).

3. Once the application is administratively complete, the applicant is required to publish the first notice, the Notice of Receipt of Application and Intent to Obtain Permit (NORI), as applicable. See 30 TAC Section 39.418. The NORI is a unique feature of the Texas Public Notice Process. The NORI provides information to the public about the receipt of an application and provides basic information about the proposed new source or modification such as a description of the location and the nature of the proposed activity, a description of the public comment process, and the location where materials will be made available for review. The NORI does not provide any technical information, but rather serves as an indicator of future public notices and actions that may be of interest, enabling the public to anticipate draft permits. The NORI is required for all new applications for Flexible Permits at 30 TAC Section 39.402(a)(4) and most applications for amendments to Flexible Permits at 30 TAC 39.402(a)(5). Note that certain applications for Flexible Permit amendments are exempted from the Chapter 39 public notice provisions as discussed in this proposed action at Section IV.B.3.

4. TCEQ completes the technical review and makes a preliminary decision. The TCEQ has 180 days from the date a new Flexible Permit application is administratively complete, or 150 days from the date a Flexible Permit amendment application is administratively complete, to conduct the technical review and make a preliminary decision. See 30 TAC 116.714, which cross-references the requirements at 30 TAC Section 116.114(a)(2).

5. The applicant is required to publish the second notice, the Notice of Application and Preliminary Decision (NAPD) when notified by TCEQ of the preliminary decision. See 30 TAC Section 39.419. The NAPD notice provides the information and notice to the public consistent with federal requirements. The NAPD provides details about the preliminary decision and draft permit and the location where applicable air quality analyses and other technical materials will be made available for public review. NAPD is required for all air quality permit applications for new Flexible Permits and most Flexible Permit applications subject to the Chapter 39 public notice provisions. Note that certain applications for Flexible Permit amendments are exempted from the Chapter 39 public notice provisions as discussed in Section V.A.3. of the TSD accompanying this proposed action at section IV.B.3.

6. The TCEQ files the Executive Director's (ED) draft permit and preliminary decision, the preliminary determination summary and air quality analysis with the chief clerk and the clerk posts this information on the TCEQ's Web site. See 30 TAC Section 39.419(e).

7. The comment period runs for 30 days after the last publication of the NAPD discussed in Step 5. See 30 TAC Section 55.152(a)(1).

8. A public meeting is held if the ED determines there is a substantial or significant degree of public interest; if the meeting is requested by a member of the legislature representing the general area of the proposed facility/modification; if a public meeting is otherwise required by law. See 30 TAC Section 55.154(c).

9. The ED prepares a response to all comments received. See 30 TAC Section 55.156(b)(1).

10. The ED files the response to comments with the chief clerk as soon as practicable, but not later than 60 days after the end of the comment period. See 30 Section TAC Section 55.156(b)(3).

11. The chief clerk will mail or transmit the ED decision and the RTC to the applicant, any person who submitted comments and any person on the mailing list for the permit action. See 30 TAC Section 55.156(c).

12. The ED will take final action on the permit application within 150 days of receipt of a Flexible Permit amendment application or 180 days for a new Flexible Permit application. The TCEQ's one-year clock is based on the completion of the technical review and the publication of the NAPD as provided in Step 5. See 30 TAC 116.714, which cross-references the requirements at 30 TAC Section 116.114(c)(3).

2. Analysis of the Submitted Public Participation Rules for Flexible Permits as Minor NSR Requirements

The Texas public participation requirements for Flexible Permit applications are outlined at 30 TAC Section 39.402 and apply to the following types of permits.

- New flexible permits under Chapter 116, Subchapter G—30 TAC Section 39.402(a)(4).
- Amendments to flexible permits under Chapter 116, Subchapter G when the amendment involves:

(a) A change in character of emissions or release of an air contaminant not previously authorized under the permit (i.e., change in control method or an increase in emission rate)—30 TAC Section 39.402(a)(5)(A);

(b) The total emissions increase from all facilities to be authorized under the amended Flexible Permit at a facility not affected by THSC, section 382.020,[11] exceeds the State's established ''de minimis'' levels—30 TAC Section 39.402(a)(5)(B);

(c) The total emissions increase from all facilities to be authorized under the amended permit at a facility affected by THSC, section 382.020, exceeds the State's established ''insignificant'' levels

[11] THSC, § 382.020 establishes emission control requirements for selected agricultural facilities such as cotton gins, corn mills, grain elevators, peanut processing, or rice drying facilities.

found in 30 TAC Section 39.402(a)(5)(C); or

(d) Other minor amendments to Flexible Permits where the Executive Director determines reasonable likelihood for interest or impact—30 TAC Section 39.402(a)(5)(D)(i)–(iv).

Despite the thresholds established in 30 TAC Sections 39.402(a)(5)(B) and (C), the TCEQ rules at 30 TAC Section 39.402(a)(5)(D) vest the TCEQ Executive Director with the authority to require public notice for an otherwise exempt Flexible Permit amendment if there is (1) reasonable likelihood of significant public interest in the activity, (2) reasonable likelihood for emissions impact at a nearby receptor, (3) reasonable likelihood of high nuisance potential from the operation of the facility, or (4) the application involves a facility in the lowest classification under Texas Water Code, Sections 5.753 and 5.754 and the Compliance History Rules at 30 TAC Chapter 60. This type of Director's Discretion is appropriate for a minor source program because the exercise of that discretion is bounded by the four criteria identified above, and because the discretion allows the director to increase requirements rather than to authorize exceptions to those requirements. See 78 FR at 12585–86 and the discussion above at IV, A, 2.

The notice requirements for each type of Flexible Permit application listed above are generally the same, meaning that an application for a new Flexible Permit and an application to amend a Flexible Permit will have the same public notice requirements. The submitted Texas rules generally provide that all applications for new Flexible Permits and applications for qualifying Flexible Permit amendments will go through public notice using the Texas NORI and NAPD notices. Therefore, the public will receive notice of the application and have the opportunity to comment on the draft permit and accompanying technical information. Note that the applicant is legally responsible for the publication of the NORI and NAPD, using the specific notice text provided through regulations by the TCEQ. The applicant is also legally responsible for providing copies of the public notice documents to the EPA Regional Office, local air pollution control agencies with jurisdiction in the county, and air pollution control agencies of nearby states that may be impacted by the proposed new source or modification. The NORI and NAPD both identify locations where materials, including the draft permit and all technical materials supporting the decision, will be made available for public review. The TCEQ will respond to each comment received when making a final permit decision. The TCEQ will also provide opportunity for a public meeting on the permit application if requested. On January 6, 2014, the EPA approved the Texas Public Participation rule, which includes the general notice requirements of the NORI and NAPD as consistent with federal requirements at 40 CFR 51.160 and 51.161. See 79 FR 551. See docket EPA–R06–OAR–2010–0612 in *www. regulations.gov.* EPA views the public participation applicability provisions at 30 TAC Sections 39.402(a)(4) and (a)(5) as integral to the functionality and implementation of the Texas Flexible Permits Program. As such, it is inappropriate to give full approval for these public participation provisions that apply to the Texas Flexible Permits Program until the underlying program is fully approved. Additionally, fully approving these public participation provisions without full approval of the underlying Flexible Permits Program may create confusion for the public and the regulated community. Therefore, we propose to find it appropriate to conditionally approve the notice provisions consistent with our actions on the underlying Flexible Permits Program. In today's notice we are proposing to conditionally approve the applicability requirements at 30 TAC Sections 39.402(a)(4) and (a)(5) that require an applicant to follow the NORI and NAPD processes for applications for new and amended Flexible Permits.

3. Minor NSR Public Notice Requirements Specific to Two Types of Minor NSR Flexible Permit Amendment Applications

As explained above, the submitted Texas public participation provisions create a tiered program, wherein two certain types of Minor NSR Flexible Permit amendment applications that have been defined by TCEQ as ''de minimis'' or ''insignificant'' will not automatically require public notice. The following outlines the specific thresholds that qualify as ''de minimis'' or ''insignificant'' under the revised rules, and the basis for TCEQ's determination.

i. Identification of the Minor NSR Flexible Permits Emission Thresholds and Affected Source Populations

- Thresholds are only used for Flexible Permit amendment applications. Applications for new Minor NSR Flexible Permits are required by these submitted rules to go through the public procedures of the NORI and NAPD. The applications for amendments to Flexible Permits are further divided based on the amount of emission increases at issue and whether the facility is affected by THSC section 382.020.
- THSC section 382.020 applies to agricultural facilities such as corn mill, cotton gin, feed mill, grain elevator, peanut processing facility or rice drying facility.
  - 30 TAC Section 39.402(a)(5)(B) provides that if the application for the amendment of a Flexible Permit is not for an affected agricultural facility then the public notice provided through the NORI and NAPD apply, unless the total emissions increase from all facilities authorized in the Flexible Permit amendment does not exceed any of the following levels established by the State as ''de minimis'' levels:
    - 50 tons per year (TPY) carbon monoxide (CO)
    - 10 TPY sulfur dioxide ($SO_2$)
    - 0.6 TPY lead (Pb)
    - 5 TPY of $NO_X$, volatile organic compounds (VOC), particulate matter (PM), or any other contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.
  - 30 TAC Section 39.402(a)(5)(C) provides that if the amendment for a Flexible Permit is for an affected agricultural facility, then the public notice requirements of the NORI and NAPD apply, unless the total emissions increase from all authorized facilities in the Flexible Permit amendment does not exceed any of the following thresholds established by the State as ''insignificant'' thresholds:
    - 250 TPY CO or $NO_X$
    - 25 TPY of VOC, $SO_2$, PM or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.
    - A new major stationary source or major modification threshold as defined in 30 TAC Section 116.12 of this title
    - A new major stationary source or major modification threshold, as defined in 40 CFR 52.21 under the PSD requirements
- If the Flexible Permit amendment application includes proposed emissions increases of any air contaminant above the identified threshold then the amendment application is required to go through notice pursuant to Chapter 39 requirements. That means the Flexible Permit amendment application will go through the NORI and NAPD publication process.

ii. Discussion of the ''De minimis'' and ''Insignificant'' Thresholds for Minor NSR Flexible Permit Amendments

The thresholds established by the State as ''de minimis'' thresholds at 30

TAC Section 39.402(a)(5)(B) apply to all minor NSR Flexible Permit amendment applications, except those for affected agricultural facilities. The thresholds selected by the State at 30 TAC Section 39.402(a)(5)(C), and called ''insignificant'' thresholds, apply only to minor NSR Flexible Permit amendment applications for affected agricultural facilities.

Within the scope of the Texas Minor NSR program, the ''de minimis'' and ''insignificant'' thresholds distinguish those minor Flexible Permit amendment applications that require full review from those that may not. But, the thresholds do not affect any part of the technical review of these minor NSR Flexible Permit amendment applications or the requirement to comply with other requirements such as application of required control technology, reporting when required to the emissions inventory, and analysis of monitoring data. Additionally, being below the ''de minimis'' or ''insignificant'' threshold does not override any notice or technical requirements for PSD, NNSR or new Minor NSR Flexible Permit applications.

In our January 6, 2014, final rulemaking approving Texas public participation, we found that TCEQ provided an adequate demonstration to show that their selected ''de minimis'' and ''insignificant'' thresholds for Minor NSR permitting are adequate to meet federal requirements for Minor NSR. See 79 FR 551. The State's demonstration is also applicable to the thresholds as they apply to minor amendments to existing Flexible Permits. TCEQ also provided supplemental information concerning the Flexible Permit holders' use of these thresholds since they were adopted by the State.[12] [13] The supplemental data are also included in the docket for this rulemaking. Our analysis of this supplemental information demonstrates that from Fiscal Year 1994 through Fiscal Year 2013, the TCEQ issued only one Flexible Permit to a facility that would be classified as an agricultural facility under THSC 382.020. This agricultural facility never applied for a flexible permit amendment and has subsequently gone through the de-flex process. Consequently, there are no existing Flexible Permits for affected agricultural sources; therefore the ''insignificant'' thresholds are not available for use for any current flexible permit holders. Additionally, this supplemental information demonstrates that prior to Texas Fiscal Year 2002, flexible permit amendments issued to non-agricultural facilities did not go through public notice. Fiscal Year 2002 represents the time period where TCEQ adopted and implemented the ''de minimis'' and ''insignificant'' thresholds. Since the time of adoption and implementation at the state level of the ''de minimis'' and ''insignificant'' thresholds in Fiscal Year 2002, the TCEQ records indicate that 326 amendments to flexible permits have been issued. Of the 326 applications for amendments to Flexible Permits, 135 applications have been required to go through notice due to the application of the thresholds. Our analysis of this supplemental information leads us to conclude that the application of the ''de minimis'' and ''insignificant'' thresholds specific to applications for Flexible Permit amendments increases the opportunity for public notice and participation in Texas. In the TSD for this rulemaking, we have included EPA's full analysis of the State's rationale for these thresholds and a discussion of the supplemental data provided by TCEQ. We propose to find this demonstration meets 40 CFR 51.160 and 51.161.

4. How do the Texas public notice provisions for applications for new and amended flexible permits address the concerns identified in EPA's November 26, 2008 proposed limited approval/limited disapproval for Texas public participation?

On November 26, 2008, EPA identified two deficiencies in the Texas public participation rules specific to applications for new Flexible Permits and amendments to Flexible Permits. See 73 FR 72001, at 72008. Below we reiterate the deficiencies and discuss how the revised Texas public participation process for applications for new Flexible Permits and amendments to Flexible Permits addresses our concerns.

- For initial issuance of a flexible permit to establish a minor NSR applicability cap or an increase in a flexible permit cap, the rules do not require 30-day notice and comment on information submitted by the owner or operator and the agency's analysis of the effect of the permit on ambient air quality, including the agency's proposed approval or disapproval as required by 40 CFR 51.161.

The public participation requirements specific to applications for new Flexible Permits and amendments to Flexible Permits at 30 TAC Sections 39.402(a)(4) and (a)(5) address the deficiency identified on November 26, 2008. All applications for new Flexible Permits are required at 30 TAC Section 39.402(a)(4) to go through public notice as specified in Chapter 39; which means that all applications for new Flexible Permits must publish the NORI pursuant to 30 TAC Section 39.418 and the NAPD pursuant to 30 TAC Section 39.419. The public notice process for a new Flexible Permit will run through two different publication dates. The first public notice announces the company has applied to the TCEQ for a flexible permit. This date is initially published first using the NORI. The second public notice announces the release of the draft permit. The entire public notice period runs through the end of the second 30-day comment period on the draft permit. The date may be extended through the date of any public meeting that was scheduled wherein the public can review TCEQ's analysis and preliminary determination. All applications for amendments to Flexible Permits are required at 30 TAC Section 39.402(a)(5) to go through public notice as specified in Chapter 39 using the NORI and NAPD process if the amendment will exceed the ''de minimis'' or ''insignificant'' thresholds.

- Where PSD and NNSR terms and conditions are modified or eliminated when the permit is incorporated into a flexible permit, the rules do not require public participation consistent with 40 CFR 51.161 and 51.166(q).

As explained in Section IV.A.4 of this proposed rulemaking, the TCEQ adopted amendments to 30 TAC Section 116.711(2)(M)(vii) to specify that the flexible permit application must identify any terms, conditions, and representations in any Subchapter B permit which will be superseded by or incorporated under a flexible permit and provide an analysis of how the conditions and control requirements of a Subchapter B permit will be carried forward in the proposed flexible permit. This amendment to the Flexible Permit Program was submitted as a SIP revision by the TCEQ on October 21, 2013, and will ensure that the Flexible Permit Program is for minor NSR actions only and will not circumvent the major source requirements.

Section 30 TAC Section 39.402(a)(4) provides that an application for a new flexible permit must go through Chapter 39 public notice. Therefore, where a new flexible permit application will supersede or incorporate any term, condition, and/or representation of a Subchapter B permit, this information will be available for review and

[12] Email from Janis Hudson, TCEQ to Adina Wiley, EPA titled ''Flexible Permit Amendment Applications'' dated September 11, 2013.

[13] Email from Janis Hudson, TCEQ to Adina Wiley, EPA, titled ''Flexible Permit Amendment Applications—Clarification'' dated October 23, 2013.

comment during the required NORI and NAPD publication for an application for a new flexible permit. Similarly, 30 TAC Section 39.402(a)(5)(A)–(C) requires that an application for an amendment to a flexible permit application must go through Chapter 39 public notice if the amendment is for an air contaminant not previously authorized or the amendment exceeds the identified ''de minimis'' or ''insignificant'' thresholds. The TCEQ Executive Director also has the discretion under 30 TAC Section 39.402(a)(5)(D) to require notice for an application for a Flexible Permit amendment that would not otherwise be required to provide notice.

5. Proposed Findings Specific to the Texas Public Participation Provisions for the Flexible Permit Program

EPA proposes to find that TCEQ's public participation program requirements specific to applications for new Flexible Permits and applications for amendments to Flexible Permits at 30 TAC Sections 39.402(a)(4) and (5) satisfy the provisions of 40 CFR 51.160(e) and 51.161. Moreover, we also propose to find that the TCEQ revised rules for discretionary public notice for new Flexible Permits and applications for amendments to Flexible Permits are approvable, because the provisions adequately confine Executive Director discretion by authorizing the use of discretion under specified criteria that are consistent with the goals and purposes of the Act to provide an adequate opportunity for informed public participation. EPA is proposing to find that the submitted Texas public participation regulations identifying the applicant as the legally responsible party also meet the requirements to provide opportunity for public comment and for information availability at 40 CFR 51.161, because the NORI and NAPD both identify locations where materials, including the draft permit and all technical materials supporting the decision will be made available for public review and the required information is submitted to EPA.

Finally, as explained above, we propose to find that the submitted provisions address all deficiencies specific to public notice for Flexible Permits that we previously cited in our November 26, 2008, proposed limited approval/limited disapproval of Texas public notice requirements. However, EPA views the public participation applicability provisions at 30 TAC Sections 39.402(a)(4) and (a)(5) as integral to the functionality and implementation of the Texas Flexible Permits Program. As such, it is inappropriate to give full approval for these public participation provisions that apply to the Texas Flexible Permits Program until the underlying program is fully approved. Additionally, fully approving these public participation provisions without full approval of the underlying Flexible Permits Program may create confusion for the public and the regulated community. Therefore, we propose to find it appropriate to conditionally approve the notice provisions consistent with our actions on the underlying Flexible Permits Program. Accordingly, we propose conditional approval of the Texas public notice provisions at 30 TAC Sections 39.402(a)(4) and (a)(5) for applications for new Flexible Permits and applications for amendments to Flexible Permits as submitted on July 2, 2010. Additionally, we propose conditional approval of the public participation requirement in the Flexible Permit Program at 30 TAC Section 116.740 as initially submitted on November 29, 1994; and further revised on July 22, 1998; October 25, 1999; and October 21, 2013.

*C. Does proposed approval of the Texas Flexible Permit Program interfere with attainment, reasonable further progress, or any other applicable requirement of the Act?*

Under Section 110(l) of the CAA, the regulations submitted as a SIP revision adopting and implementing the Texas Flexible Permit Program must meet the procedural requirements of Section 110(l) by demonstrating that the State followed all necessary procedural requirements such as providing reasonable notice and public hearing of the SIP revision. Additionally, the SIP revision must demonstrate that the adopted rules will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. We propose to find that the TCEQ satisfied all requirements pursuant to Section 110(l). See Section IV.A. of the accompanying TSD developed in support of this action including the sections *Administrative Materials* (2.1) and *Technical Support* (2.2).

The regulation of minor sources is a requirement of the CAA and EPA's regulations at 40 CFR 51.160–51.164. As discussed in this proposed action and in the accompanying TSD, EPA proposes that the Flexible Permit Program as submitted October 21, 2013, satisfies the minimum requirements for minor NSR programs, including adequate provisions for enforceability and public participation to ensure protection of the control strategy and any applicable NAAQS. The Flexible Permit Program also contains sufficient safeguards to prevent circumvention of major NSR permitting requirements. Therefore, we propose that the Flexible Permit Program is protective of the NAAQS and applicable control strategy requirements and satisfies the requirements of 110(l) of the Act.

*D. TCEQ's Interpretive Letter*

Below are excerpts from the December 9, 2013, interpretive letter (letter) provided by the TCEQ. This letter was requested by EPA to clarify perceived ambiguity in certain provisions in the SIP submission and to also describe how the program will be implemented. The full text of the letter can be found in the Docket for this action. We believe this letter clarifies the following aspects of the Flexible Permit Program and supports our determination that the Submittal is conditionally approvable.

- EPA asked for clarification on how director discretion is used in the rule in establishing monitoring and recordkeeping. The letter states that director discretion does not act as a variance to the monitoring and recordkeeping requirements. Texas asserts in its letter that ''TCEQ does not allow an exemption or waiver from these statutory and regulatory monitoring and recordkeeping requirements.'' They further assert that the ''monitoring condition is bounded by the requirement to be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. The sampling methods and procedures are those generally recognized in the field of air pollution or new methods or procedures with demonstrated scientific applicability.'' Whatever the requirements the Executive Director imposes, permit holders must maintain information ''sufficient to demonstrate continuous compliance'' with the emission caps and individual limits. 30 TAC Section 116.715(c)(6). We agree with TCEQ that this ensures the Program's enforceability and conclude that the information in the letter supports our proposed conditional approval.
- EPA asked for clarification regarding how pollution control equipment should be maintained and operated during startup/shutdown. The State explained in its letter that the process works as follows: ''The Flexible Permit Program (FPP) requires controls to be operated during normal facility operation. This rule may be construed to require operation of emission controls only during routine facility operations, potentially exempting sources during

startups or shutdowns (not malfunctions), but that is accurate only to the extent that the permit only authorizes routine operations. Emission limits for startups and shutdowns, appropriately modeled during permit development, may be authorized and be subject to a separate emissions cap in the flexible permit. The TCEQ does not authorize malfunctions, and therefore those emissions are not subject to any use of control equipment, although the control equipment must be used where feasible, to minimize emissions where possible during periods of unauthorized emissions. Excess emissions that occur during unauthorized startups, shutdowns or malfunctions are not excused by the FPP.'' We agree with TCEQ that this interpretation of their rule adequately addresses startups, shutdowns, and malfunctions and conclude that the information in the letter supports our proposed conditional approval. EPA asked for clarification on how the Texas SIP approved alternative permitting mechanisms may be used to alter a flexible permit. Also we wanted to understand in detail that any such changes, using alternative permit mechanisms (Standard permits or Permits by Rule (PBR)), would not be allowed if they violate the terms of an existing flexible permit. For example, if the flexible permit contains a 100 tpy cap then a facility (see Section II.M. regarding an explanation of how TCEQ defines ''facility'') should not be able to use a PBR to get authorization to increase emissions by 10 tons without amending the flexible permit. The State responded, in part, that ''Either of these authorizations may be used for facilities that are subject to a flexible permit cap, but the Standard Permit or PBR limits must be contained within the flexible permit cap, and cannot be used to relax or minimize any existing permit condition (such as recordkeeping, monitoring, reporting, testing, BACT, etc.). If one of these authorizations was allowed without being part of the emissions subject to the cap, such an approach would circumvent the basis used to establish the flexible permit, and could potentially affect the control technology, monitoring and testing requirements that were used to establish the emission cap.'' In addition, Texas explained that ''standard permits and PBRs cannot be used to alter compliance obligations in a flexible permit. Further, if more than one state or federal rule or regulation or permit conditions are applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated''. We agree with TCEQ that this clarification about how alternative permitting mechanisms may be used to alter a flexible permit resolves our concern and conclude that the information in the letter supports our proposed conditional approval. EPA asked for clarification on the relationship between an issued permit and the permit application. Specifically, do the Texas rules require the permit application be updated with the permit terms so there is never a situation where compliance with the permit application would not be the same as compliance with the permit? In response Texas stated, ''The permit application, and all the representations in it, is part of the permit when it is issued and as such is enforceable. If more than one state or federal rule or regulation or flexible permit condition are applicable, then the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated. The permit application is not updated after permit issuance except as necessary to demonstrate that the facilities can comply with the performance specified in the permit.'' In addition, Texas stated, ''As is the case with all TCEQ air quality permits, the permit application, which is part of the issued permit, continues to be read together with any permit changes made via an alteration or amendment.'' We agree with TCEQ that this clarification about the relationship between an issued permit and the permit application resolves our concern and conclude that the information in the letter supports our proposed conditional approval.

- EPA asked for clarification on how the State uses BACT to create the emissions cap. We specifically requested an interpretation on how BACT will be established and implemented for facilities (see discussion on TCEQ's definition of ''facility'') constructed prior to 1972 (commonly referred to as grandfathered facilities); facilities constructed after 1971 that will be under an emissions cap; and facilities that are subject to PSD permit requirements. In relevant part, Texas stated that with regard to grandfathered facilities, there are no longer any grandfathered facilities, for state permitting purposes, in Texas. At the time the Texas Clean Air Act (TCAA) was amended in 2001 to require these facilities to be permitted (or shut down), each had to install BACT that was at least ten years old. For facilities constructed after 1971, the TCEQ's NSR permit rules require new or modified major or minor sources meet BACT regardless of whether there is or will be a cap in a minor NSR permit. The cap is established using a current BACT analysis, and, although minor sources may not have to add controls, removal of existing controls (which would be backsliding under the SIP) is not allowed. Therefore, all facilities under the cap must meet overall/collective BACT. When a new facility is authorized, the new facility must meet the current BACT level at the time it is authorized regardless of whether it is subject to an emissions cap. For facilities that are subject to a cap, BACT is evaluated for any new facility that is proposed to be added to what is already authorized under the cap. When existing facilities are modified, and the existing facilities are authorized under an existing emissions cap, BACT is reviewed and the cap is adjusted accordingly. Emission limitation caps are developed based on the potential to emit after the application of BACT (or, if applicable, lowest achievable emission rate) emission controls. Further, allowable emission limits, expressed as a cap for an individual facility, are expressed in terms of annual (tons per year) or short-term (e.g., pounds per hour) units. BACT is typically expressed in terms of a mass emission calculation, such as pounds per million British thermal units (lb/MMBtu) or parts per million (ppm). Establishment of caps after application of the appropriate control technology does not relax the control technology.'' We agree with TCEQ that this clarification about how BACT is used to create an emissions cap resolves our concern and conclude that the information in the letter supports our proposed conditional approval.
- EPA asked for clarification on how the Flexible Permit Program relates to major source permitting. In response Texas stated, ''facilities subject to PSD or non-attainment NSR requirements must meet control technology determined in accordance with SIP approved 30 TAC Chapter 116, Subchapter B requirements and removal, avoidance or circumvention of control equipment is not allowed for facilities subject to PSD or non-attainment NSR. We agree with TCEQ that this interpretation further supports that the Flexible Permit Program does not allow circumvention of major NSR and conclude that the information in the letter supports our proposed conditional approval.

*E. Summary of EPA's Evaluation of the Flexible Permit Program as a Minor NSR Program*

For the reasons presented above, EPA finds that the Flexible Permit Program,

as submitted on October 21, 2013, is limited to minor NSR permitting. EPA finds that the program satisfies the federal requirements for minor NSR programs and contains sufficient enforceable safeguards to ensure that the NAAQS and applicable control strategies are protected. Further, the Flexible Permit Program prevents circumvention of major NSR requirements by stating at 30 TAC Section 116.716(c)(1)(A) that if a new source or modification subject to either a flexible permit or flexible permit amendment is subject to major NSR requirements, either PSD or NNSR, under 30 TAC Chapter 116, Subchapter B, then the major NSR permitting requirements will apply.

Therefore, the EPA is proposing to conditionally approve the Flexible Permit Program based on the commitment from the TCEQ to adopt and submit Flexible Permit Program SIP revisions by November 30, 2014, that will reformat and organize the full program into a cohesive, understandable, and enforceable program as TCEQ proposed to do in its December 9, 2013, commitment letter.

## V. Proposed Action

EPA proposes to conditionally approve the Texas Flexible Permit Program that was originally submitted as a revision to the Texas Minor NSR SIP Permit Program on November 29, 1994. We also proposed to conditionally approve the Texas Flexible Permit Program as further amended on March 13, 1996; July 22, 1998; October 25, 1999; September 11, 2000; April 12, 2001; July 31, 2002, September 4, 2002; October 4, 2002; September 25, 2003; July 2, 2010; October 5, 2010; and October 21, 2013. Our proposed conditional approval of the Texas Flexible Permit Program is conditioned on the TCEQ adopting and submitting a SIP revision addressing the December 9, 2013, commitment letter provided by the TCEQ. The commitment states that TCEQ will submit amended rules that are properly structured and consistent, as discussed earlier, with the actions taken by the Commission on September 24, 2013, and with rulemaking requirements of the Texas Administrative Procedure Act by November 30, 2014. EPA has made the preliminary determination that the Flexible Permit Program is conditionally approvable as a minor NSR permit program in accordance with the CAA Section 110 and part C, and EPA regulations at 40 CFR 51.160–51.164 for the reasons presented above and in our accompanying TSD. EPA invites the public to make comments on all aspects of the EPA proposed conditional approval of the Texas Flexible Permit Program, and to submit them by the Date listed above.

EPA proposes to conditionally approve the specific revisions to the Texas SIP identified below.

- Revisions to 30 TAC Section 39.402(a)(4) and (a)(5)—Applicability to applications for new and amended Flexible Permits—submitted July 2, 2010.
- Revisions to 30 TAC Section 116.10—General Definitions—submitted March 13, 1996; Repealed, adopted and submitted July 22, 1998; Redesignated and submitted October 4, 2002; Amended 116.10(9)(E)—submitted October 5, 2010.
- Revisions to 30 TAC Section 116.13—Flexible Permit Definitions—submitted November 29, 1994; Repealed, adopted and submitted July 22, 1998; Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.110—Applicability—submitted November 29, 1994; Section 116.110(a)(3) Repealed, adopted and submitted July 22, 1998.
- Revisions to 30 TAC Section 116.710—Applicability—submitted November 29, 1994; Revised and submitted July 22, 1998; Revised and submitted September 11, 2000.
- Revisions to 30 TAC Section 116.711—Flexible Permit Application—submitted November 29, 1994; Revised and submitted July 22, 1998; Added, redesignated and submitted April 12, 2001; Designated, added, revised and submitted September 4, 2002; and Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.714—Application Review Schedule—submitted November 29, 1994; Revised and submitted July 22, 1998.
- Revisions to 30 TAC Section 116.715—General and Special Conditions—Submitted November 29, 1994; Revised and submitted July 22, 1998; Revised and submitted September 11, 2000; Revised and submitted April 12, 2001; Revised and submitted September 4, 2002; Revised and submitted September 25, 2003.
- Revisions to 30 TAC Section 116.716—Emission Caps and Individual Emission Limitations—submitted November 29, 1994; and Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.717—Implementation Schedule for Additional Controls—submitted November 29, 1994.
- Revisions to 30 TAC Section 116.718—Significant Emission Increase—submitted November 29, 1994.
- Revisions to 30 TAC Section 116.720—Limitation on Physical and Operational Changes—submitted November 29, 1994.
- Revisions to 30 TAC Section 116.721—Amendments and Alterations—submitted November 29, 1994; Revised and submitted July 22, 1998; Revised and submitted September 11, 2000.
- Revisions to 30 TAC Section 116.722—Distance Limitations—submitted November 29, 1994; Revised and submitted September 11, 2000.
- 30 TAC Section 116.730—Compliance History—submitted November 29, 1994; Withdrawn October 21, 2013.
- Revisions to 30 TAC Section 116.740(a)—Public Notice and Comment—submitted November 29, 1994; Designated, added and submitted July 22, 1998; Revised and submitted October 25, 1999; and Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.750—Flexible Permit Fee—submitted November 29, 1994; Revised and submitted July 22, 1998; Revised and submitted September 11, 2000; Revised and submitted October 4, 2002; and Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.760 Flexible Permit Renewal—submitted November 29, 1994.
- Revisions to 30 TAC Section 116.765—Compliance Schedule—submitted October 21, 2013.

Those regulatory sections that were identified as being withdrawn by the TCEQ in the October 21, 2013, submittal and identified in the cover letter to the package are also identified below:

- 30 TAC Section 116.711(3) (last sentence only) and (11), as amended August 21, 2002, and all earlier versions withdrawn October 21, 2013.
- Adopted revisions submitted October 21, 2013. 30 TAC Section 116.715(a), only with regard to the text ''or Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA Section 112(g), 40 CFR Part 63))'', as amended August 21, 2002, and all earlier versions withdrawn on October 21, 2013.
- 30 TAC Section 116.715(c)(6) as amended August 20, 2003, and all earlier versions withdrawn October 21, 2013. 30 TAC Section 116.716(a) and (d), as adopted November 16, 1994, withdrawn October 21, 2013.

• 30 TAC Section 116.730 adopted November 16, 1994, and repealed and readopted June 17, 1998.

• 30 TAC Section 116.740(b), adopted June 17, 1998, and amended September 2, 1999, withdrawn October 21, 2013. 30 TAC Section 116.803, adopted August 21, 2002, withdrawn October 21, 2013.

If the conditional approval of the Texas Flexible Permit Program is finalized following EPA's review of comments received and the TCEQ satisfies the terms of the commitment letter, the TCEQ will then submit a SIP revision to the EPA for review which must contain all the terms of the commitment letter. If the EPA determines that the TCEQ has met all the conditions, we will make such a finding in the **Federal Register**.

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. See, 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 proposes to approve 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.

## List of Subjects in 40 CFR Part 52

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

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

Dated: January 29, 2014.

**Ron Curry,**

*Regional Administrator, Region 6.*

[FR Doc. 2014–03119 Filed 2–11–14; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Parts 212, 225, and 252

**RIN 0750–AH94**

### Defense Federal Acquisition Regulation Supplement: Clauses With Alternates—Foreign Acquisition (DFARS Case 2013–D005)

**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 separate prescriptions for the basic clause as well as each alternate in each set of foreign acquisition-related provisions/clauses with one or more alternates. In addition, the proposed rule would include the full text of each provision or clause alternate.

**DATES:** *Comment Date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before April 14, 2014, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2013–D005, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2013–D005'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2013–D005.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2013–D005'' on your attached document.

○ *Email: dfars@mail.mil.* Include DFARS Case 2013–D005 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy 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. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6106.

**SUPPLEMENTARY INFORMATION:**

## I. Background

DoD is proposing to amend the DFARS 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 text, it retains the language that precedes the 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.,* ''Trade Agreements—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

Although DFARS part 225 contains eight solicitation provisions and clauses that have, or are, alternates, this proposed rule will only address six. The other two are currently being revised in another DFARS case. The remaining prescriptions in DFARS part 225 are not proposed to be changed in any way by this proposed rule.

The six DFARS foreign acquisition-related provisions/clauses that would be affected by this rule are as follows:

- 252.225–7000, Buy American—Balance of Payments Program Certificate, one alternate;
- 252.225–7001, Buy American and Balance of Payments Program, one alternate;
- 252.225–7020, Trade Agreements Certificate, one alternate.
- 252.225–7021, Trade Agreements, two alternates;
- 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, five alternates; and
- 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program, five alternates.

## 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 full text, 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. DoD awarded an average of 270,000 contract actions (excluding modifications and orders) in Fiscal Year 2012, of which an average of 180,000 (67%) were awarded to about 35,000 unique small business entities. It is unknown as to 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 2013–D005), in correspondence.

## V. Paperwork Reduction Act

The rule does not contain 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 Parts 212, 225, and 252**

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 212, 225, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 212, 225, 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. Amend section 212.301 by revising paragraphs (f)(xix), (xx), and (xxxix) to read as follows:

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(f) * * *

(xix) Use the provision at 252.225–7000, Buy American–Balance of Payments Program Certificate, to comply with 41 U.S.C. chapter 83 and Executive Order 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act.

(A) Use the basic provision as prescribed in 225.1101(1)(i).

(B) Use the provision with its Alternate I as prescribed in 225.1101(1)(ii).

(xx) Use the clause at 252.225–7001, Buy American and Balance of Payments Program to comply with 41 U.S.C. chapter 83 and Executive Order 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act.

(A) Use the basic clause as prescribed in 225.1101(2)(ii).

(B) Use the clause with its Alternate I as prescribed in 225.1101(2)(iii).

* * * * *

(xxxix) Use the clause at 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Alternates II, III, and V also implement section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(A) Use the basic clause as prescribed in 225.1101(10)(i)(A).

(B) Use the clause with its Alternate I as prescribed in 225.1101(10)(i)(B).

(C) Use the clause with its Alternate II as prescribed in 225.1101(10)(i)(C).

(D) Use the clause with its Alternate III as prescribed in 225.1101(10)(i)(D).

(E) Use the clause with its Alternate IV as prescribed in 225.1101(10)(i)(E).

(F) Use the clause with its Alternate V as prescribed in 225.1101(10)(i)(F).

* * * * *

## PART 225—FOREIGN ACQUISITION

■ 3. Amend section 225.1101 by—

■ a. Revising paragraph (1);

■ b. In paragraph (2)(i), removing the phrase ''Use the clause'' and adding in its place ''Use the basic or the alternate of the clause'';

■ c. In paragraph (2)(i)(B), removing ''Subpart'' in two places and adding in its place ''subpart'', and by removing ''may still be'' and adding in its place ''is still'';

■ d. In paragraph (2)(i)(D), removing ''One or both of the following clauses'' and adding in its place ''One or both of the basic or the alternates of the following clauses'';

■ e. Redesignating paragraph (2)(ii) as paragraph (2)(iii), adding a new paragraph (2)(ii), and revising the newly redesignated paragraph (2)(iii).

■ f. In paragraph (3) introductory text, removing the phrase ''one of the following clauses:'' and adding in its place ''one of the basic or the alternates of the following clauses:'';

■ g. Redesignating paragraph (5)(i) as paragraph (5) introductory text and amending the newly redesignated paragraph (5) introductory text by removing ''Use the provision'' and adding in its place ''Use the basic or the alternate of the provision'', and adding a new paragraph (5)(i);

■ h. Revising paragraph (5)(ii);

■ i. Redesignating paragraph (6)(i) as paragraph (6) introductory text and amending the newly redesignated paragraph (6) introductory text by removing ''Use the clause'' and adding in its place ''Except as provided in paragraph (6)(iv) of this section, use the basic or an alternate of the clause'', removing ''World Trade Organization Government Procurement Agreement applies'' and adding in its place ''World Trade Organization Government Procurement Agreement applies, i.e. the acquisition is of end products listed at 225.401–70, the value of the acquisition equals or exceeds $204,000, and none of the exceptions at 25.401(a) applies'', and adding a new paragraph (6)(i);

■ j. In paragraph (6)(ii), by removing ''Use the clause with its Alternate II,'' and adding its place ''Use the clause Trade Agreements—Alternate II'', and removing ''acquisition of commercial items, when'' and adding in its place ''acquisition of commercial items, that do not include the clause at 252.225–7024, Requirement for Products or Services from Afghanistan, when'';

■ k. In paragraph (6)(iii), revising the introductory text;

■ l. Redesignating paragraph (9)(i) as paragraph (9) introductory text and amending the newly redesignated paragraph (9) introductory text by removing ''Use the provision'' and adding in its place ''Use the basic or an alternate of the provision'', removing ''that include the clause at 252.225–7036,'' and adding in its place ''that include the basic or an alternate of the clause at 252.225–7036'', and adding a new paragraph (9)(i);

■ m. In paragraph (9)(ii), removing ''Use the provision with its Alternate I'' and adding its place ''Use the provision Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate I'';

■ n. In paragraph (9)(iii), removing ''Use the provision with its Alternate II'' and adding its place ''Use the provision Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate II'';

■ o. In (9)(iv), removing ''Use the provision with its Alternate III'' and adding its place ''Use the provision Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate III'';

■ p. In paragraph (9)(v), removing ''Use the provision with its Alternate IV'' and adding its place ''Use the provision Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate IV'';

■ q. In paragraph (9)(vi), removing ''Use the provision with its Alternate V'' and adding its place ''Use the provision Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate V'';

■ r. In paragraph (10)(i) introductory text, removing '',use the clause at 252.225–7036,'' and adding in its place '',use the basic or an alternate of the clause at 252.225–7036,'' and removing ''$204,000, and a Free Trade Agreement applies to the acquisition.'' and adding in its place ''$204,000, unless an exception at 25.401 applies.''

■ s. In paragraph (10)(i)(A), removing ''Use the basic clause'' and adding its place ''Use the clause Buy American—Free Trade Agreements—Balance of Payments Program—Basic,'';

■ t. In paragraph (10)(i)(B), removing ''Use the clause with its Alternate I'' and adding its place ''Use the clause Buy American—Free Trade Agreements—Balance of Payments Program—Alternate I,'';

■ u. Redesignating paragraph (10)(i)(C) as paragraph (10)(i)(E) and in newly redesignated paragraph (10)(i)(E), removing ''Use the clause with its Alternate IV'' and adding its place ''Use the clause Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV,'' and removing ''in support of operations in Afghanistan, use with its Alternate V.'' and adding in its place ''in support of operations in Afghanistan.'';

■ v. Adding new paragraphs (10)(i)(C), (10)(i)(D), and (10)(i)(F); and

■ w. In paragraph (10)(ii), revising the introductory text.

The revisions and additions read as follows:

**225.1101 Acquisition of supplies.**

(1) Use the basic or the alternate of the provision at 252.225–7000, Buy American—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–2, Buy American Certificate, in any solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that includes the basic or the alternate of the clause at 252.225–7001, Buy American and Balance of Payments Program. If the solicitation includes the provision at FAR 52.204–7, do not separately list the provision 252.225–7000 in the solicitation.

(i) Use the provision Buy American—Balance of Payments Program Certificate—Basic, when the solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, includes the basic clause at 252.225–7001.

(ii) Use the provision Buy American—Balance of Payments Program Certificate—Alternate I in solicitations, including solicitations using FAR part 12 procedures, when the solicitation includes Alternate I of the clause at 252.225–7001.

(2) * * *

(ii) Use the clause Buy American and Balance of Payments Program—Basic, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, if the acquisition is not of end products listed in 225.401–70 in support of operations in Afghanistan.

(iii) Use the clause Buy American and Balance of Payments Program—Alternate I, in solicitations and contracts including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan.

* * * * *

(5) * * *

(i) Use the provision Trade Agreements Certificate—Basic, if the solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, includes the basic clause at 252.225–7021.

(ii) Use the provision Trade Agreements Certificate—Alternate I, if the solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, includes the Alternate II of the clause at 252.225–7021.

(6) * * *

(i) Use the clause Trade Agreements—Basic, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are not of end products in support of operations in Afghanistan, or that include the clause at 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan.

* * * * *

(iii) Do not use the basic or an alternate of the clause if—

* * * * *

(9) * * *

(i) Use the provision Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Basic in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the basic of the clause at 252.225–7036 is used.

* * * * *

(10) * * *

(i) * * *

(C) Use the clause Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the estimated value equals or exceeds $100,000 and the acquisition is of end products in support of operations in Afghanistan.

(D) Use the clause Buy American—Free Trade Agreements—Balance of Payments Program—Alternate III, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the estimated value is less than $79,507 and the acquisition is of end products in support of operations in Afghanistan.

* * * * *

(F) Use the clause Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the estimated value equals or exceeds $79,507 but is less than $100,000 and the acquisition is of end products in support of operations in Afghanistan.

(ii) Do not use the basic or an alternate of the clause in paragraph (10)(i) of this section if—

* * * * *

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 252.225–7000 by—

■ a. Revising the introductory text, provision title and date, and paragraph (a); and

■ b. Revising Alternate I.

The revisions read as follows:

**252.225–7000 Buy American—Balance of Payments Program Certificate.**

As prescribed in 225.1101(1), use one of the following provisions:

*Basic.* As prescribed in 225.1101(1)(i), use the following provision.

**BUY AMERICAN—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—BASIC (DATE)**

(a) *Definitions. Commercially available off-the-shelf (COTS) item, component, domestic end product, foreign end product, qualifying country, qualifying country end product, South Caucasus/Central and South Asian (SC/CASA) state, South Caucasus/Central and South Asian (SC/CASA) state end product,* and *United States,* as used in this provision, have the meanings given in the Buy American and Balance of Payments Program clause of this solicitation.

* * * * *

*Alternate I.* As prescribed in 225.1101(1)(ii), use the following provision, which adds ''South Caucasus/Central and South Asian (SC/CASA) state'' and ''South Caucasus/Central and South Asian (SC/CASA) state end product'' in paragraph (a), and replaces ''qualifying country end products'' in paragraphs (b)(2) and (c)(2) with ''qualifying country end products or SC/CASA state end products.''

**BUY AMERICAN—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—ALTERNATE I (DATE)**

(a) *Definitions. Commercially available off-the-shelf (COTS) item, component, domestic end product, foreign end product, qualifying country, qualifying country end product, South Caucasus/Central and South Asian (SC/CASA) state, South Caucasus/Central and South Asian (SC/CASA) state end product,* and *United States,* as used in this provision, have the meanings given in the Buy American and Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will evaluate offers of qualifying country end products or SC/CASA state end products without regard to the restrictions of the Buy American statute or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American and Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except those listed in paragraphs (c)(2) or (3) of this provision, is a domestic end product; and

(ii) For end products other than COTS items, components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror certifies that the following end products are qualifying country end products or SC/CASA state end products:

Line Item Number

Country of Origin

(3) The following end products are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of ''domestic end product'':

Line Item Number

Country of Origin (If Known)

(End of provision)

■ 5. Amend section 252.225–7001 by—

■ a. Revising the introductory text, clause title and date, and

■ b. Revising Alternate I.

The revisions read as follows:

**252.225–7001 Buy American and Balance of Payments Program.**

As prescribed in 225.1101(2)(i), use one of the following clauses:

*Basic.* As prescribed in 225.1101(2)(ii), use the following clause.

**BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM—BASIC (DATE)**

* * * * *

*Alternate I.* As prescribed in 225.1101(2)(iii), use the following clause, which adds ''South Caucasus/Central and South Asian (SC/CASA) state'' and ''South Caucasus/Central and South Asian (SC/CASA) state end product'' to paragraph (a), and uses different paragraphs (b) and (c) than the basic clause.

BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM—ALTERNATE I (DATE)

(a) *Definitions.* As used in this clause—

*Commercially available off-the-shelf (COTS) item*—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of ''commercial item'' in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

*Component* means an article, material, or supply incorporated directly into an end product.

*Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

*(1)* Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

*(2)* It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

*End product* means those articles, materials, and supplies to be acquired under this contract for public use.

*Foreign end product* means an end product other than a domestic end product.

*Qualifying country* means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

*Qualifying country component* means a component mined, produced, or manufactured in a qualifying country.

*Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if —

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

*South Caucasus/Central and South Asian (SC/CASA) state* means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

*South Caucasus/Central and South Asian (SC/CASA) state end product* means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*United States* means the 50 States, the District of Columbia, and outlying areas.

(b) This clause implements the Balance of Payments Program. Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or an SC/CASA state end

product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

■ 6. Amend section 252.225–7013 by—

■ a. Removing the clause date ''(OCT 2013)'' and adding in its place ''(DATE)''; and

■ b. In paragraph (a), revising the definition for ''Eligible product''.

The revision reads as follows:

**252.225–7013 Duty-Free Entry.**

* * * * *

(a) * * *

*Eligible product* means—

(i) *Designated country end product,* as defined in the Trade Agreements (basic or alternate) clause of this contract;

(ii) *Free Trade Agreement country end product,* other than a *Bahrainian end product,* a *Moroccan end product,* a *Panamanian end product,* or a *Peruvian end product,* as defined in the Buy American—Free Trade Agreements—Balance of Payments Program—Basic or the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II clause of this contract;

(iii) *Canadian end product,* as defined in the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate I or Buy American—Free Trade Agreements—Balance of Payments Program—Alternate III clause of this contract; or

(iv) *Free Trade Agreement country end product* other than a *Bahrainian end product, Korean end product, Moroccan end product, Panamanian end product,* or *Peruvian end product,* as defined in the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV or the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V clause of this contract.

* * * * *

■ 7. Amend section 252.225–7020 by—

■ a. Revising the introductory text, provision title and date, and paragraph (a); and

■ b. Revising Alternate I.

The revisions read as follows:

**252.225–7020 Trade Agreements Certificate.**

As prescribed in 225.1101(5), use one of the following provisions:

*Basic.* As prescribed in 225.1101(5)(i), use the following provision.

**Trade Agreements Certificate—Basic (Date)**

(a) *Definitions. Designated country end product, nondesignated country end product, qualifying country end product,* and *U.S.-made end product,* as used in this provision, have the meanings given in the Trade Agreements clause of this solicitation.

* * * * *

*Alternate I.* As prescribed in 225.1101(5)(ii), use the following provision, which adds ''South Caucasus/Central and South Asian (SC/CASA) state'' and ''South Caucasus/Central and South Asian (SC/CASA) state end product'' to paragraph (a) and uses different paragraphs b)(2), and (c) than the basic clause.

**Trade Agreements Certificate—Alternate I (Date)**

(a) *Definitions. Designated country end product, nondesignated country end product, qualifying country end product, South Caucasus/Central and South Asian (SC/CASA) state, South Caucasus/Central and South Asian (SC/CASA) state end product,* and *U.S.-made end product,* as used in this provision, have the meanings given in the Trade Agreements clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will consider only offers of end products that are U.S.-made, qualifying country, SC/CASA state, or designated country end products unless—

(i) There are no offers of such end products;

(ii) The offers of such end products are insufficient to fulfill the Government's requirements; or

(iii) A national interest waiver has been granted.

(c) *Certification and identification of country of origin.*

(1) For all line items subject to the Trade Agreement clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2)(ii) of this provision, is a U.S.-made, qualifying country, SC/CASA state, or designated country end product.

(2)(i) The following supplies are SC/CASA state end products:

(Line Item Number) (Country of Origin)

(ii) The following are other nondesignated country end products:

(Line Item Number) (Country of Origin)

(End of provision)

■ 8. Amend section 252.225–7021 by—

■ a. Revising the introductory text, clause title and date; and

■ b. Revising Alternate II.

The revisions read as follows:

**252.225–7021 Trade Agreements.**

As prescribed in 225.1101(6), use one of the following clauses:

*Basic.* As prescribed in 225.1101(6)(i), use the following clause.

**Trade Agreements—Basic (Date)**

* * * * *

*Alternate II.* As prescribed in 225.1101(6)(ii), use the following clause, which adds ''South Caucasus/Central and South Asian (SC/CASA) state'' and ''South Caucasus/Central and South Asian (SC/CASA) state end product'' to paragraph (a); (ii) uses a different paragraph (c) than the basic clause; (iii) adds a new paragraph (d); and (iv) includes paragraphs (e) and (f) which are the same paragraphs (d) and (e) of the basic clause.

**Trade Agreements—Alternate II (Date)**

(a) *Definitions.* As used in this clause—

*Caribbean Basin country end product*—

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself; and

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—

(A) Textiles, apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and handloomed, handmade, or folklore articles that are not granted duty-free status in the Harmonized Tariff Schedule of the United States (HTSUS);

(B) Tuna, prepared or preserved in any manner in airtight containers; and

(C) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.

*Commercially available off-the-shelf (COTS) item*—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of ''commercial item'' in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

*Component* means an article, material, or supply incorporated directly into an end product.

*Designated country* means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ''the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu'' (Chinese Taipei)), or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

*Designated country end product* means a WTO GPA country end product, a Free Trade Agreement country end product, a least developed country end product, or a Caribbean Basin country end product.

*End product* means those articles, materials, and supplies to be acquired under this contract for public use.

*Free Trade Agreement country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Least developed country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Nondesignated country end product* means any end product that is not a U.S.-made end product or a designated country end product.

*Qualifying country* means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

*Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

*South Caucasus/Central and South Asian (SC/CASA) state* means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

*South Caucasus/Central and South Asian (SC/CASA) state end product* means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*United States* means the 50 States, the District of Columbia, and outlying areas.

*U.S.-made end product* means an article that—

(i) Is mined, produced, or manufactured in the United States; or

(ii) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*WTO GPA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, SC/CASA state, or designated country end products unless—

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2)(i) Offers of U.S.-made, qualifying country, SC/CASA state, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted.

(d) If the Contractor is from an SC/CASA state, the Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement

opportunities to U.S. products and services and suppliers of such products and services.

(e) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(f) The HTSUS is available on the Internet at *http://www.usitc.gov/tata/hts/bychapter/index.htm.* The following sections of the HTSUS provide information regarding duty-free status of articles specified in paragraph (a)(2)(ii)(A) of this clause:

(1) General Note 3(c), Products Eligible for Special Tariff Treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries Under the United States—Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits Under the United States—Caribbean Basin Trade Partnership Act.

(End of clause)

■ 9. Amend section 252.225–7035 by—

■ a. Revising the introductory text, provision title and date; and

■ b. Revising Alternates I, II, III, IV, and V.

The revisions read as follows:

**252.225–7035 Buy American—Free Trade Agreements—Balance of Payments Program Certificate.**

As prescribed in 225.1101(9), use one of the following provisions:

*Basic.* As prescribed in 225.1101(9)(i), use the following provision.

**Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Basic (Date)**

* * * * *

*Alternate I.* As prescribed in 225.1101(9)(ii), use the following provision, which uses ''Canadian end product'' in paragraph (a), rather than ''Bahrainian end product,'' ''Free Trade Agreement country,'' ''Free Trade Agreement country end product,'' ''Moroccan end product,'' ''Panamanian end product,'' and ''Peruvian end products'' in paragraph (a) of the basic provision; uses ''Canadian end products'' in paragraphs (b)(2) and (c)(2)(i), rather than ''Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products'' in paragraphs (b)(2) and (c)(2)(ii) of the basic provision; and does not use ''Australian or'' in paragraph (c)(2)(i).

**Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate I (Date)**

(a) *Definitions. Canadian end product, commercially available off-the-shelf (COTS) item, component, domestic end product, foreign end product, qualifying country end product,* and *United States,* as used in this provision, have the meanings given in the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products or Canadian end without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Canadian) end products:

(Line Item Number) (Country of Origin)

(ii) The offeror certifies that the following supplies are Canadian end products:

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of *domestic end product:*

(Line Item Number) (Country of Origin (If known))

(End of provision)

*Alternate II.* As prescribed in 225.1101(9)(iii), use the following provision, which adds ''South Caucasus/Central and South Asian (SC/CASA) state'' and ''South Caucasus/Central and South Asian (SC/CASA) state end product'' to paragraph (a), and uses different paragraphs (b)(2) and (c)(2)(i) than the basic clause.

**Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate II (Date)**

(a) *Definitions. Bahrainian end product, commercially available off-the-shelf (COTS) item, component, domestic end product, Free Trade Agreement country, Free Trade Agreement country end product, foreign end product, Moroccan end product, Panamanian end product, Peruvian end product, qualifying country end product, South Caucasus/Central and South Asian (SC/CASA) state, South Caucasus/Central and South Asian (SC/CASA) state end product,* and *United States,* as used in this provision, have the meanings given in the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products, SC/CASA state end products, or Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) or SC/CASA state end products:

(Line Item Number) (Country of Origin)

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of *domestic end product:*

(Line Item Number) (Country of Origin (If known))

(End of provision)

*Alternate III.* As prescribed in 225.1101(9)(iv), use the following provision, which uses different paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) than the basic clause.

**Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate III (Date)**

(a) *Definitions. Canadian end product, commercially available off-the-shelf (COTS) item, domestic end product, foreign end product, qualifying country end product, South Caucasus/Central and South Asian (SC/CASA) state end product,* and *United States,* as used in this provision have the meanings given in the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the

Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products, SC/CASA state end products, or Canadian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Canadian) or SC/CASA state end products:

(Line Item Number) (Country of Origin)

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of *domestic end product:*

(Line Item Number) (Country of Origin (If known))

(End of provision)

*Alternate IV.* As prescribed in 225.1101(9)(v), use the following provision, which adds ''Korean end product'' to paragraph (a) and uses ''Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products'' in paragraphs (b)(2) and (c)(2)(ii), rather than ''Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products'' in paragraphs (b)(2) and (c)(2)(ii) of the basic provision.

**Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate IV (Date)**

(a) *Definitions. Bahrainian end product, commercially available off-the-shelf (COTS) item, component, domestic end product, Free Trade Agreement country, Free Trade Agreement country end product, foreign end product, Korean end product, Moroccan end product, Panamanian end product, Peruvian end product, qualifying country end product,* and *United States,* as used in this provision, have the meanings given in the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) end products:

(Line Item Number) (Country of Origin)

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of *domestic end product:*

(Line Item Number) (Country of Origin (If known))

(End of provision)

*Alternate V.* As prescribed in 225.1101(9)(vi), use the following provision, which uses different paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) than the basic clause.

**Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate V (Date)**

(a) *Definitions. Bahrainian end product, commercially available off-the-shelf (COTS) item, component, domestic end product, Free Trade Agreement country, Free Trade Agreement country end product, foreign end product, Korean end product, Moroccan end product, Panamanian end product, Peruvian end product, qualifying country end product, South Caucasus/Central and South Asian (SC/CASA) state end product,* and *United States,* as used in this provision, have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products, SC/CASA state end products, or Free Trade Agreement end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American statute or the Balance of Payments Program.

(c) Certifications and identification of country of origin.

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) or SC/CASA state end products:

(Line Item Number) (Country of Origin)

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of *domestic end product:*

(Line Item Number) (Country of Origin (If known))

(End of provision)

■ 10. Amend section 252.225–7036 by—

■ a. Revising the introductory text, clause title and date; and

■ b. Revising Alternates I, II, III, IV, and V.

**252.225–7036 Buy American—Free Trade Agreements—Balance of Payments Program.**

As prescribed in 225.1101(11)(i), use one of the following clauses:

*Basic.* As prescribed in 225.1101(10)(i)(A), use the following clause.

**Buy American—Free Trade Agreements—Balance of Payments Program—Basic (Date)**

* * * * *

*Alternate I.* As prescribed in 225.1101(10)(i)(B), use the following clause, which adds ''Canadian end product'' to paragraph (a) and uses a different paragraph (c) than the basic clause.

**Buy American—Free Trade Agreements—Balance of Payments Program—Alternate I (Date)**

(a) *Definitions.* As used in this clause—

*Bahrainian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Canadian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Commercially available off-the-shelf (COTS) item*—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of ''commercial item'' in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

*Component* means an article, material, or supply incorporated directly into an end product.

*Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

*(1)* Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

*(2)* It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

*End product* means those articles, materials, and supplies to be acquired under this contract for public use.

*Foreign end product* means an end product other than a domestic end product.

*Free Trade Agreement country* means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

*Free Trade Agreement country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Moroccan end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Panamanian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Peruvian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Peru; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Qualifying country* means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

*Qualifying country component* means a component mined, produced, or manufactured in a qualifying country.

*Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

*United States* means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, Canadian, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Canadian end product, the Contractor shall deliver a qualifying country end product, a Canadian end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

*Alternate II.* As prescribed in 225.1101(10)(i)(C), use the following clause, which adds ''South Caucasus/Central and South Asian (SC/CASA) state'' and ''South Caucasus/Central and South Asian (SC/CASA) state end product'' to paragraph (a), and uses a different paragraph (c) than the basic clause.

**Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II (Date)**

(a) *Definitions.* As used in this clause—

*Bahrainian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Commercially available off-the-shelf (COTS) item*—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of ''commercial item'' in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

*Component* means an article, material, or supply incorporated directly into an end product.

*Domestic end product means*—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

*(1)* Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

*(2)* It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

*End product* means those articles, materials, and supplies to be acquired under this contract for public use.

*Foreign end product* means an end product other than a domestic end product.

*Free Trade Agreement country* means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

*Free Trade Agreement country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Moroccan end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Panamanian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Peruvian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Peru; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Qualifying country* means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country,

and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

*Qualifying country component* means a component mined, produced, or manufactured in a qualifying country.

*Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

*South Caucasus/Central and South Asian (SC/CASA) state* means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

*South Caucasus/Central and South Asian (SC/CASA) state end product* means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*United States* means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

*Alternate III.* As prescribed in 225.1101(10)(i)(D), use the following clause, which adds ''Canadian end product'', ''South Caucasus/Central and South Asian (SC/CASA) state'', and ''South Caucasus/Central and South Asian (SC/CASA) state end product'' to paragraph (a) and uses a different paragraph (c) than the basic clause.

**Buy American—Free Trade Agreements—Balance of Payments Program—Alternate III (Date)**

(a) *Definitions.* As used in this clause—

*Bahrainian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Canadian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Commercially available off-the-shelf (COTS) item*—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of ''commercial item'' in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

*Component* means an article, material, or supply incorporated directly into an end product.

*Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

*(1)* Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

*(2)* It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

*End product* means those articles, materials, and supplies to be acquired under this contract for public use.

*Foreign end product* means an end product other than a domestic end product.

*Free Trade Agreement country* means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

*Free Trade Agreement country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Moroccan end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Panamanian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Peruvian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Peru; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Qualifying country* means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

*Qualifying country component* means a component mined, produced, or manufactured in a qualifying country.

*Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

*South Caucasus/Central and South Asian (SC/CASA) state* means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

*South Caucasus/Central and South Asian (SC/CASA) state end product* means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*United States* means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Canadian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Canadian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Canadian end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

*Alternate IV.* As prescribed in 225.1101(10)(i)(E), use the following clause, which adds ''Korean end product'' to paragraph (a), and uses a different paragraph (c) than the basic clause.

**Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV (Date)**

(a) *Definitions.* As used in this clause—

*Bahrainian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Commercially available off-the-shelf (COTS) item*—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of ''commercial item'' in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without

modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

*Component* means an article, material, or supply incorporated directly into an end product.

*Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

*(1)* Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

*(2)* It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

*End product* means those articles, materials, and supplies to be acquired under this contract for public use.

*Foreign end product* means an end product other than a domestic end product.

*Free Trade Agreement country* means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

*Free Trade Agreement country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Korean end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Korea; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Moroccan end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Panamanian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Peruvian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Peru; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Qualifying country* means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

*Qualifying country component* means a component mined, produced, or manufactured in a qualifying country.

*Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

*United States* means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end

product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

*Alternate V.* As prescribed in 225.1101(10)(i)(F), use the following clause, which adds ''Korean end product'', ''South Caucasus/Central and South Asian (SC/CASA) state'', and ''South Caucasus/Central and South Asian (SC/CASA) state end product'' to paragraph (a), and uses a different paragraph (c) than the basic clause.

**Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V (Date)**

(a) *Definitions.* As used in this clause—

*Bahrainian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Commercially available off-the-shelf (COTS) item—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of ''commercial item'' in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

*Component* means an article, material, or supply incorporated directly into an end product.

*Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

*(1)* Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

*(2)* It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

*End product* means those articles, materials, and supplies to be acquired under this contract for public use.

*Foreign end product* means an end product other than a domestic end product.

*Free Trade Agreement country* means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

*Free Trade Agreement country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Korean end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Korea; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Moroccan end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Panamanian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Peruvian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Peru; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*Qualifying country* means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt

Finland
France
Germany
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

*Qualifying country component* means a component mined, produced, or manufactured in a qualifying country.

*Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

*South Caucasus/Central and South Asian (SC/CASA) state* means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

*South Caucasus/Central and South Asian (SC/CASA) state end product* means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

*United States* means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

[FR Doc. 2014–02928 Filed 2–6–14; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Chapter 2

**[Docket No. DARS–2014–0012]**

### Review of Statutory and Regulatory Requirements

**AGENCY:** Department of Defense.

**ACTION:** Request for public comments.

**SUMMARY:** The Director of Defense Procurement and Acquisition Policy (DPAP) is currently conducting an assessment to identify impacts experienced by industry resulting from contracting statutes.

**DATES:** Submit written comments to the address shown below on or before March 14, 2014. Comments received will be considered by DoD in the formation of a recommendation to the Secretary of Defense if a revision to the definition is necessary and appropriate.

**ADDRESSES:** Submit comments to: Mr. Michael Canales, Room 5E621, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments may also be submitted by fax at (703) 614–1254, or by email at *michael.j.canales4.civ@mail.mil.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Canales, DPAP/CPIC, by telephone at (703) 695–8571, or by email at *michael.j.canales4.civ@mail.mil.*

**SUPPLEMENTARY INFORMATION:** The purpose of the assessment is to support an internal Department of Defense (DoD) effort to reduce compliance impacts that do not achieve the benefits intended by contracting statutes. As part of this assessment, DPAP would like to receive the views of interested parties identifying particular impacts associated with specific contracting statutes. There is an extensive body of law and regulation that govern the Department's business. We are seeking to better understand the impact experienced by industry resulting from requirements based on statute. Our initial review identified approximately 400 DFARS requirements based solely on statute. The Director, DPAP, is soliciting public input to identify particular impacts associated with specific contracting statutes, with reference to—

- Particular impacts associated with specific contracting statutes;
- Why the identified impact does not achieve the intended benefit of the identified legislation, or why the intended benefit is not helpful to the Department; and
- Any recommendations for alternative approaches to achieve the intended benefit of the identified legislation.

We are also interested in candidate DFARS and component supplements requirements that, although not based in statute, warrant similar consideration.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2014–03038 Filed 2–11–14; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS–R1–ES–2010–0071; 4500030114]**

**RIN 1018–AX16**

### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Lepidium papilliferum*

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Revised proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are amending our proposal to designate critical habitat for *Lepidium papilliferum* (slickspot peppergrass) under the Endangered Species Act (Act). In total, approximately 24,808 hectares (61,301 acres) in Ada, Payette, Elmore, and

Owyhee Counties in Idaho fall within the boundaries of the revised proposed critical habitat designation. If we finalize this rule as proposed, the effect of this regulation will be to designate critical habitat for *Lepidium papilliferum* under the Act.

**DATES:** We will accept comments received or postmarked on or before March 14, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final determination.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R1–ES–2010–0071, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2010–0071; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Acting State Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709; telephone 208–378–5243; facsimile 208–378–5262. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Public Comments

We intend that any final action resulting from this revised proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning any new information pertaining to critical habitat for this species that has become available since the May 10, 2011, publication of our proposed rule to designate critical habitat for *Lepidium papilliferum* (76 FR 27184). Comments previously submitted on the proposed critical habitat designation need not be resubmitted; they have already been incorporated into the public record and will be fully considered in the final decision.

We particularly seek comments concerning the following:

(1) New scientific information regarding critical habitat for this species, including the addition of recently identified areas that meet our definition of critical habitat for the species that has become available since the May 10, 2011, publication of our proposed rule to designate critical habitat for *Lepidium papilliferum* (76 FR 27184).

(2) Whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area in critical habitat under section 4(b)(2) of the Act, after considering both the potential impacts and benefits of the proposed critical habitat designation. Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We therefore request specific information on:

- The benefits of including recently identified areas in the final designation and supporting rationale,
- The benefits of excluding any recently identified areas from the final designation and supporting rationale, and
- Whether any specific exclusions may result in the extinction of the species and why.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. Comments and materials we receive, as well as some of the supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov;* all of our supporting documentation is available by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

## Background and Previous Federal Actions

In this document, we intend to discuss only those topics directly relevant to updating the 2011 proposed critical habitat rule for *Lepidium papilliferum.* For more information on previous Federal actions concerning *Lepidium papilliferum,* refer to the proposed designation of critical habitat published in the **Federal Register** on May 10, 2011 (76 FR 27184) (2011 proposed critical habitat rule).

On October 8, 2009, we listed *Lepidium papilliferum* as a threatened species throughout its range under the Act (74 FR 52014). On November 16, 2009, Idaho Governor C. L. ''Butch'' Otter, the Idaho Office of Species Conservation, Theodore Hoffman, Scott Nicholson, and L.G. Davison & Sons, Inc., filed a complaint in the U.S. District Court for the District of Columbia challenging the 2009 final listing rule under the Administrative Procedure Act and the Endangered Species Act. Subsequently, the issue was transferred to the U.S. District Court for the District Court of Idaho (Court), and the parties involved consented to proceed before a Magistrate Judge. On August 8, 2012, the Court vacated the final rule listing *Lepidium papilliferum* as a threatened species under the Act, with directions that the case be remanded to the Service for further consideration consistent with the Court's opinion (*Otter* v. *Salazar,* Case No. 1:11–cv–00358–CWD (D. Idaho)).

During the period of the 2009 litigation, we published the 2011 proposed critical habitat rule; the comment period closed on July 11, 2011. On June 1, 2011, the Service received a request from Idaho's Governor C.L. ''Butch'' Otter requesting a 60-day extension to the comment period. On July 7, 2011, we published a notice extending the initial comment period through September 9, 2011 (76 FR 39807). We also requested comments on the proposed critical habitat designation and associated draft economic analysis during a second comment period that opened October 26, 2011, and closed on December 12, 2011 (76 FR 66250).

Rulemaking on the proposed critical habitat was suspended following the Court's ruling vacating the listing. However, elsewhere in today's issue of the **Federal Register**, we have published a document announcing our reconsideration of the listing of

*Lepidium papilliferum* relative to the issues remanded by the Court; rulemaking on the listing has, therefore, been reopened. Accordingly, we are reopening the rulemaking on our proposed rule to designate critical habitat for the species (76 FR 27184; May 10, 2011).

**Changes From Proposed Rule**

Since the publication of our May 10, 2011, proposed rule, we have received information regarding some additional areas that meet our definition of critical habitat for *Lepidium papilliferum.* To ensure that we are considering the best scientific data available in our final decision, in this document we present new scientific information that has become available to us since our 2011 proposed critical habitat rule, describe those additional areas that we believe meet the definition of critical habitat for the species, revise the proposed rule to include this new information, and seek public comment on the additional areas we are proposing as critical habitat. Should the listing of *L. papilliferum* become final, in accordance with the requirements of the Act, we will proceed with the promulgation of a final rule designating critical habitat for the species.

*Correction to the Proposed Critical Habitat for Lepidium papilliferum*

In the 2011 proposed critical habitat rule, the Service proposed to designate 23,374 ha (57,756 ac) as critical habitat for *Lepidium papilliferum* in four units in Ada, Elmore, Payette, and Owyhee Counties in Idaho. However, this amount was inadvertently overestimated due to a slight calculation error that resulted from an overlapping of polygons within the geographic information systems (GIS). This overlap of data resulted in the accidental inclusion of 291 ha (716 ac) of additional area in the proposal. The actual area of critical habitat in the 2011 proposed critical habitat rule should have been reported as 23,083 ha (57,040 ac).

*New Information Related to the Proposed Critical Habitat for Lepidium papilliferum*

As described in our 2011 proposed critical habitat rule, we based our criteria for the identification of critical habitat for *Lepidium papilliferum* on the element occurrence (EO) rankings of the Idaho Natural Heritage Program (INHP). We included all *L. papilliferum* element occurrences (EOs) with rankings of C or higher in the proposed critical habitat. We considered areas with these rankings to provide the physical and biological features essential to the conservation of the species, as they are the EOs most likely to provide for viable populations of *L. papilliferum* that will contribute to the conservation and recovery of the species. Each EO provides one or more of the PCEs as described in the proposed rule (note there are no *L. papilliferum* EOs ranked higher than B at present). We did not include sites ranked D or lower in the critical habitat designation due to the poor condition of the habitat around D-ranked sites, the low viability of the small *L. papilliferum* populations remaining at such sites, and the fragmented nature of the surrounding landscape.

Recent survey efforts have located a few additional sites occupied by *Lepidium papilliferum* within the range of the species. According to Idaho Fish and Wildlife Information System (IFWIS; formerly Idaho Natural Heritage Program (INHP)) data, eight new EOs have been located. In addition to these new EOs, some existing EOs have been expanded and in some cases merged with other EOs to meet the definition of an EO (a grouping of occupied slickspots that occur within 1 kilometer (km) (0.6 miles (mi)) of each other).

Based on the rankings of the new EOs, we have determined that seven of the eight new EOs, all of which are occupied by *Lepidium papilliferum,* meet the definition of critical habitat and contain the physical and biological features essential to conserve the species. These include one BC-ranked EO (EO 118), one BD-ranked EO (EO 114), three C-ranked EOs (EO 112, 115, 116), and two CD-ranked EOs (EO 113, 117) (IFWIS data from January 2013). The eighth EO was ranked D, and, therefore, did not meet our definition of critical habitat. The reopened comment period will provide all interested parties with an additional opportunity to submit written comments on this revised proposed rule, specifically regarding the new proposed EOs that have been included based on the best scientific data that has become available since the 2011 proposal (May 10, 2011; 76 FR 27184).

*Revised Critical Habitat Units*

Based on this new information, we have updated the previous proposed critical habitat maps, and hereby revise our May 10, 2011, proposal to designate critical habitat for *Lepidium papilliferum* (76 FR 27184) to include 1,725 ha (4,261 ac) of additional area that meets our definition of critical habitat, as described above. This amendment results in a proposal to designate a total of 24,808 ha (61,301 ac) of critical habitat for *Lepidium papilliferum* in four units in Payette (Unit 1), Ada (Unit 2), Elmore (Unit 3), and Owyhee (Unit 4) Counties in Idaho. We are proposing no new units. The additional areas proposed for critical habitat include 1,588 ha (3,926 ac) of U.S. Bureau of Land Management (BLM) lands; 23 ha (58 ac) of Bureau of Reclamation (BOR) lands; 35 ha (87 ac) of State lands; and 76 ha (188 ac) of private lands (areas do not add precisely to 1,725 ha (4,261 ac) due to rounding).

Units that have been revised to include additional area since the 2011 proposed critical habitat rule include: Unit 1—addition of EO 114; Unit 2, Subunit 2a—addition of EO 118, Subunit 2b—the expansion of EOs 18, 24, and 25; and Unit 3, Subunit 3a—expansion of EO 30 and addition of EO 112, Subunit 3b—expansion of EOs 51 and 62, and addition of EOs 113, 115, 116, and 117. See table 1 for the revised area totals of proposed critical habitat by units and subunits, and land ownership. (The GIS calculation error in the proposed rule, noted above, has been corrected in the totals within table 1).

TABLE 1—REVISED PROPOSED CRITICAL HABITAT UNITS AND AREA (HECTARES (ACRES)) BY LAND OWNERSHIP FOR LEPIDIUM PAPILLIFERUM

[Area estimates reflect all land within critical habitat unit boundaries]

| Unit or subunit | Federal | State | Municipal (county and city) | Private | Total |
|---|---|---|---|---|---|
| Unit 1— Payette County Total | 273 | 0 | 0 | 16 | 289 |
| | (675) | | | (40) | (715) |
| Unit 2—Ada County Total | 5,984 | 1,182 | 414 | 674 | 8,254 |

TABLE 1—REVISED PROPOSED CRITICAL HABITAT UNITS AND AREA (HECTARES (ACRES)) BY LAND OWNERSHIP FOR LEPIDIUM PAPILLIFERUM—Continued

[Area estimates reflect all land within critical habitat unit boundaries]

| Unit or subunit | Federal | State | Municipal (county and city) | Private | Total |
|---|---|---|---|---|---|
| | (14,789) | (2,921) | (1,023) | (1,663) | (20,396) |
| 2a | 660 | 0 | 338 | 291 | 1,289 |
| | (1,632) | ..... | (835) | (719) | (3,186) |
| 2b | 3,802 | 114 | 0 | 115 | 4,031 |
| | (9,396) | (281) | ..... | (283) | (9,960) |
| 2c | 512 | 98 | 76 | 235 | 921 |
| | (1,265) | (241) | (188) | (580) | (2,274) |
| 2d | 1,010 | 970 | 0 | 33 | 2,013 |
| | (2,496) | (2,399) | ..... | (81) | (4,977) |
| Unit 3—Elmore County Total | 3,933 | 97 | 0 | 419 | 4,449 |
| | (9,725) | (239) | ..... | (1,035) | (10,999) |
| 3a | 760 | 0 | 0 | 241 | 1,001 |
| | (1,878) | ..... | ..... | (596) | (2,474) |
| 3b | 1,044 | 97 | 0 | 49 | 1,190 |
| | (2,579) | (239) | ..... | (120) | (2,938) |
| 3c | 2,132 | 0 | 0 | 129 | 2,261 |
| | (5,268) | ..... | ..... | (319) | (5,587) |
| Unit 4—Owyhee County Total | 11,213 | 600 | 0 | 0 | 11,813 |
| | (27,709) | (1,482) | ..... | ..... | (29,191) |
| All Units | 21,403 | 1,879 | 414 | 1,109 | 24,808 |
| | (52,898) | (4,642) | (1,023) | (2,738) | (61,301) |

As in the May 10, 2011, proposed rule (76 FR 27184), all lands being proposed for designation as critical habitat are currently occupied by *Lepidium papilliferum* and contain features essential to support the life-history needs of the species that may require special management considerations or protection. See the Proposed Critical Habitat Designation section of the proposed rule for details (76 FR 27184; May 10, 2011).

In the 2009 final listing rule ((74 FR 52014; October 8, 2009), we described the total area of known EOs (that is, area covered by the EOs themselves) as being approximately 6,500 ha (16,000 ac). This area reflects only the immediate known locations of individuals of the plant, as recognized in the IFWIS database, and is a small portion of the overall geographic range of the species. In the May 10, 2011, proposed critical habitat rule (76 FR 27184), we described in detail the criteria used to identify critical habitat, including a 250-m radius around each EO to provide sufficient area for pollinator support and to minimize disturbance to the plant's habitat. This, along with the additional area resulting from inclusion of the recently discovered EOs, make up the total area now proposed for designation as critical habitat of 24,808 ha (61,301 ac).

In the rule portion of this document, we present new maps of the critical habitat units that have changed since the May 10, 2011, proposed rule (76 FR 27184). Maps illustrating the changes from the previously proposed unit boundaries are available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2010–0071 or at *http://www.fws.gov/idaho.* As noted above, the units that reflect the additional areas determined to meet our definition of critical habitat are Unit 1; Unit 2 (Subunits 2a and 2b); and Unit 3 (Subunits 3a and 3b).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this proposed revised critical habitat designation and are available at *http://www.fws.gov/idaho,* at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2010–0071, and at the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included at *http://www.regulations.gov.*

The reopened comment period will provide all interested parties with an additional opportunity to submit written comments on this revised proposed rule, specifically regarding the new proposed EOs that have been included based on the best scientific data that has become available since the 2011 proposed critical habitat rule.

**Required Determinations**

The draft economic analysis of the proposed designation concluded that critical habitat designation for *Lepidium papilliferum* is not likely to affect economic activity or conservation measures being implemented within the proposed critical habitat area (IEC 2011, p. ES–5). Because all areas proposed for critical habitat were occupied by the species, and most of the area proposed is on BLM lands, the estimated incremental impacts of critical habitat designation were limited to additional administrative costs of section 7 consultations associated with considering the potential for adverse modification of critical habitat (IEC 2011, p. ES–5). Activities on private lands were determined to be unlikely to be subject to section 7 consultation (IEC 2011, p. ES–6).

Based on these earlier determinations, we believe that the addition of the relatively small amount of occupied area proposed here is unlikely to significantly alter the results of the existing economic analysis of the designation, and we conclude that the incremental impacts of the revised proposed designation of critical habitat for *L. papilliferum* will similarly be limited to the additional administrative costs of section 7 consultations associated with considering the potential for adverse modification of critical habitat. Therefore, in this document, we affirm the required

determinations made in the May 10, 2011, proposed rule (76 FR 27184).

**References Cited**

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this revised proposed rulemaking are the staff members of the Idaho Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES**).

**Authority**

The authority for this action is the Endangered Species Act of 1977, as amended (16 U.S.C. 1531 *et seq.*).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended on May 10, 2011, at 76 FR 27184, as set forth below:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.96(a) by revising paragraphs (5), (6), (7), (8), and (9) in the entry proposed for ''*Lepidium papilliferum* (Slickspot Peppergrass)'' at 76 FR 27184 to read as follows:

**§ 17.96 Critical habitat—plants.**

(a) *Flowering plants.*

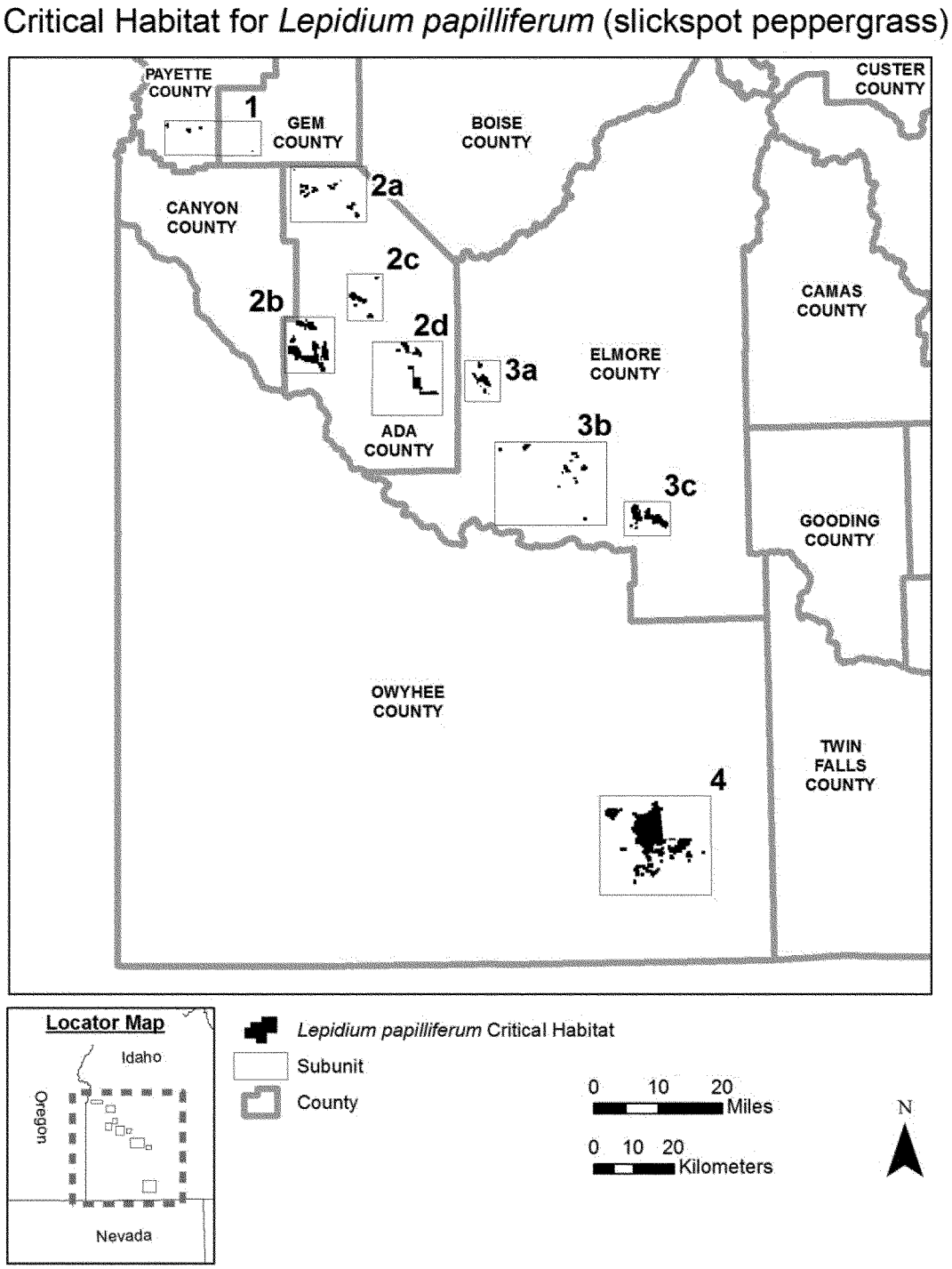
BILLING CODE 4310–55–P

* * * * *

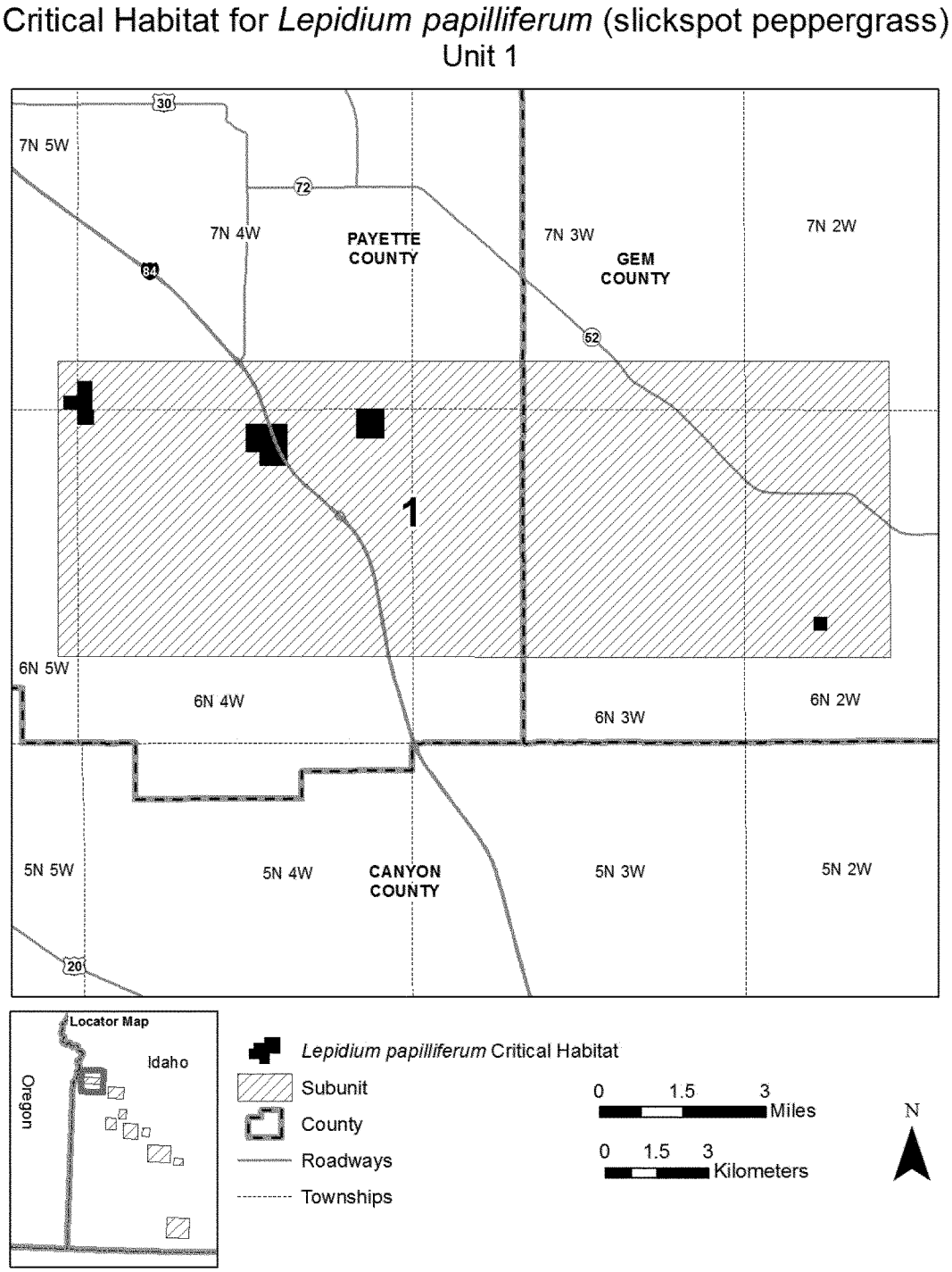
Family Brassicaceae: *Lepidium papilliferum* (Slickspot Peppergrass)

* * * * *

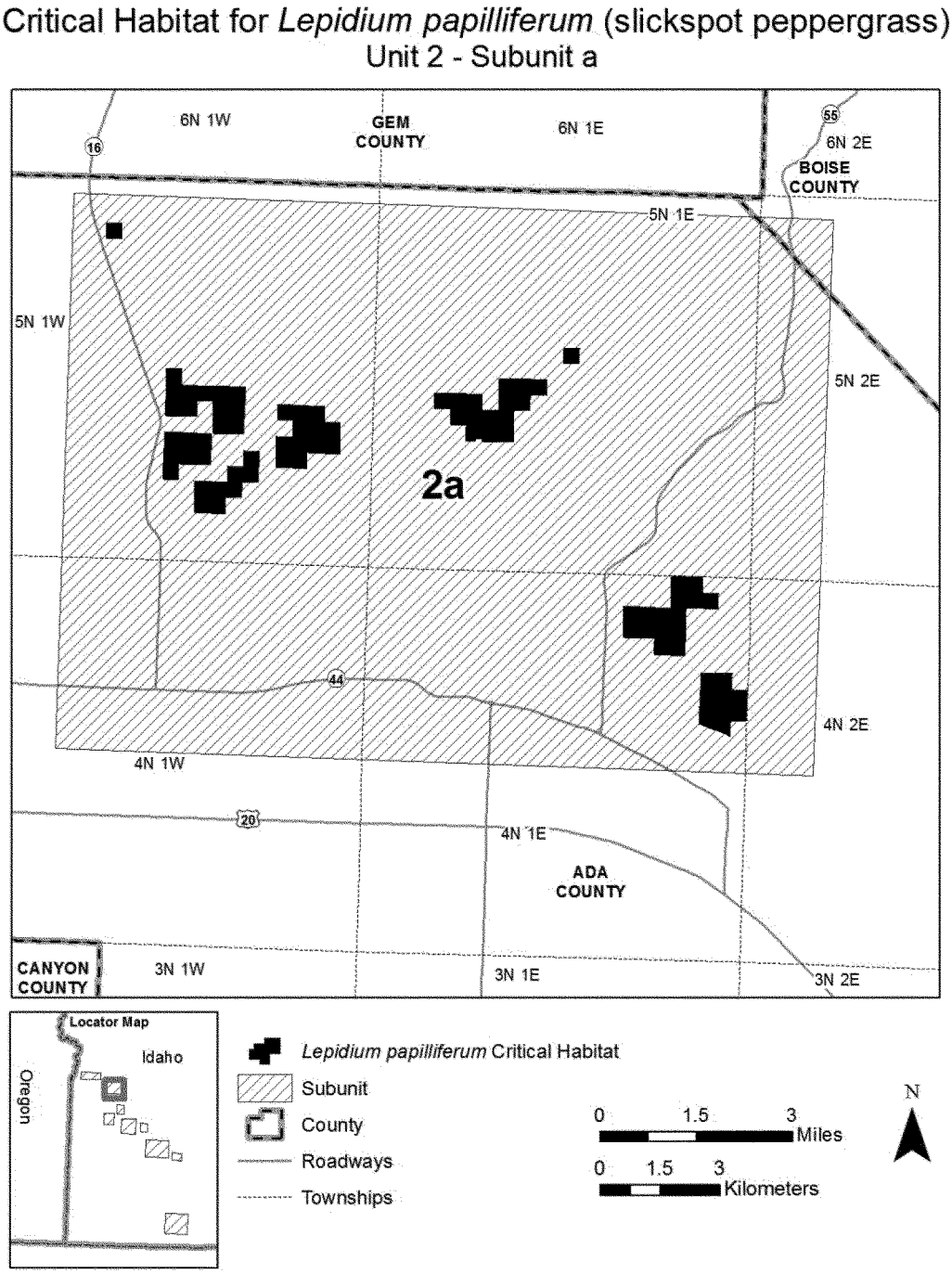
(5) Index map of critical habitat units for *Lepidium papilliferum* (slickspot peppergrass) follows:



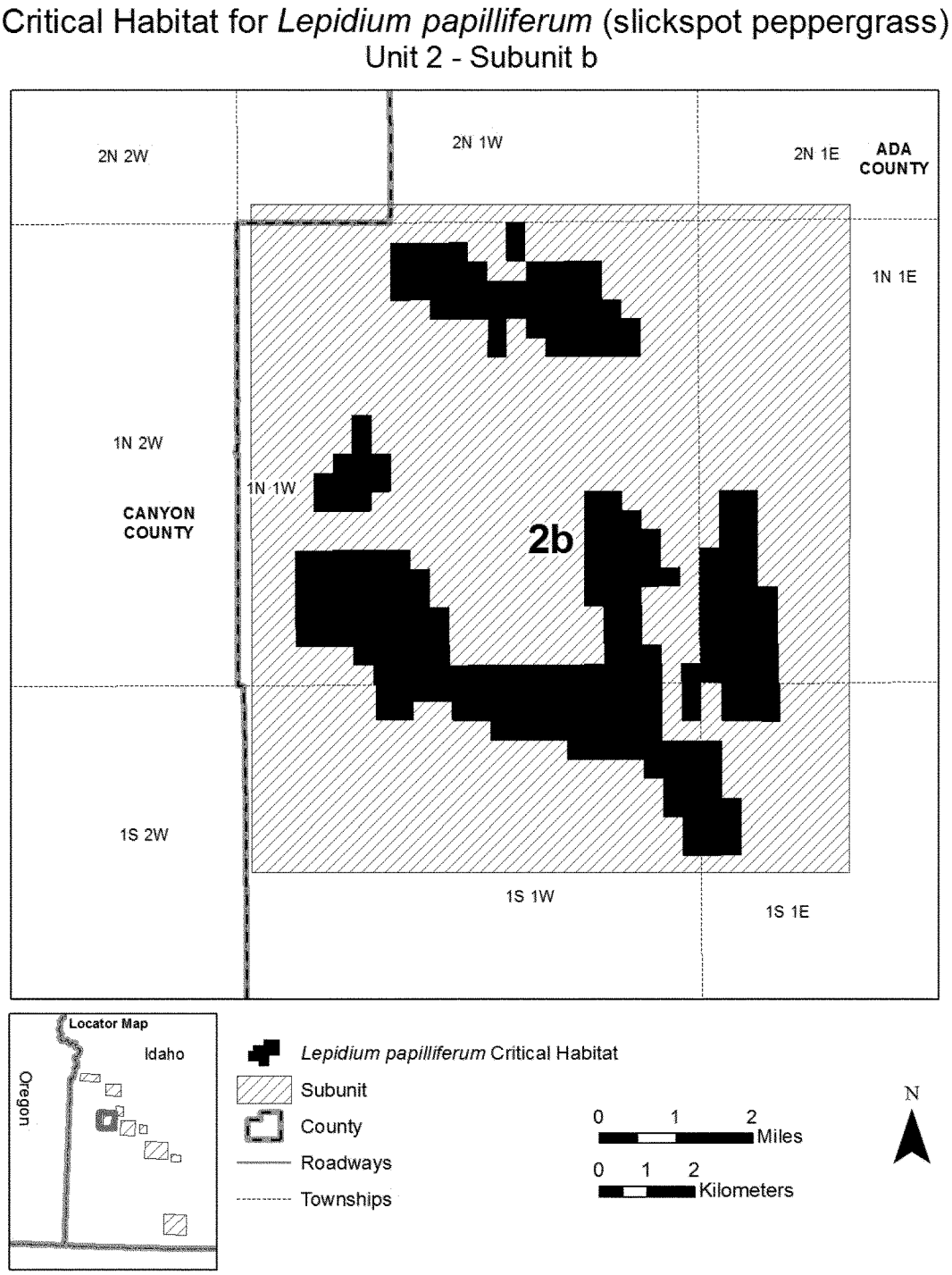
(6) Unit 1: Payette County, Idaho. Map of Unit 1 follows:



(7) Unit 2: Ada County, Idaho.
(i) Map of Unit 2, Subunit a, follows:



(ii) Map of Unit 2, Subunit b, follows:




BILLING CODE 4310–55–C

(iii) Map of Unit 2, Subunit c, follows:

* * * * *

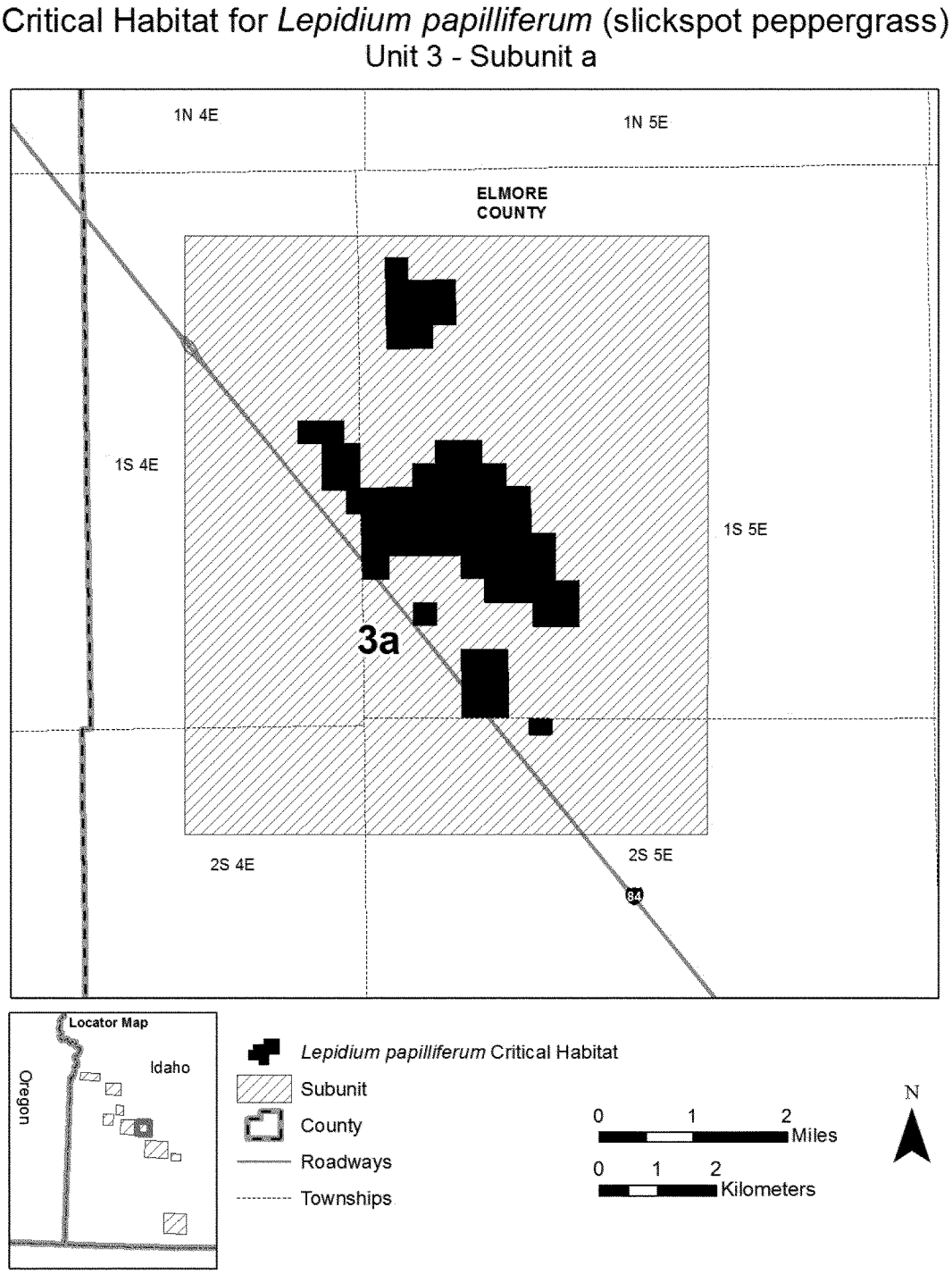
(iv) Map of Unit 2, Subunit d, follows:

* * * * *

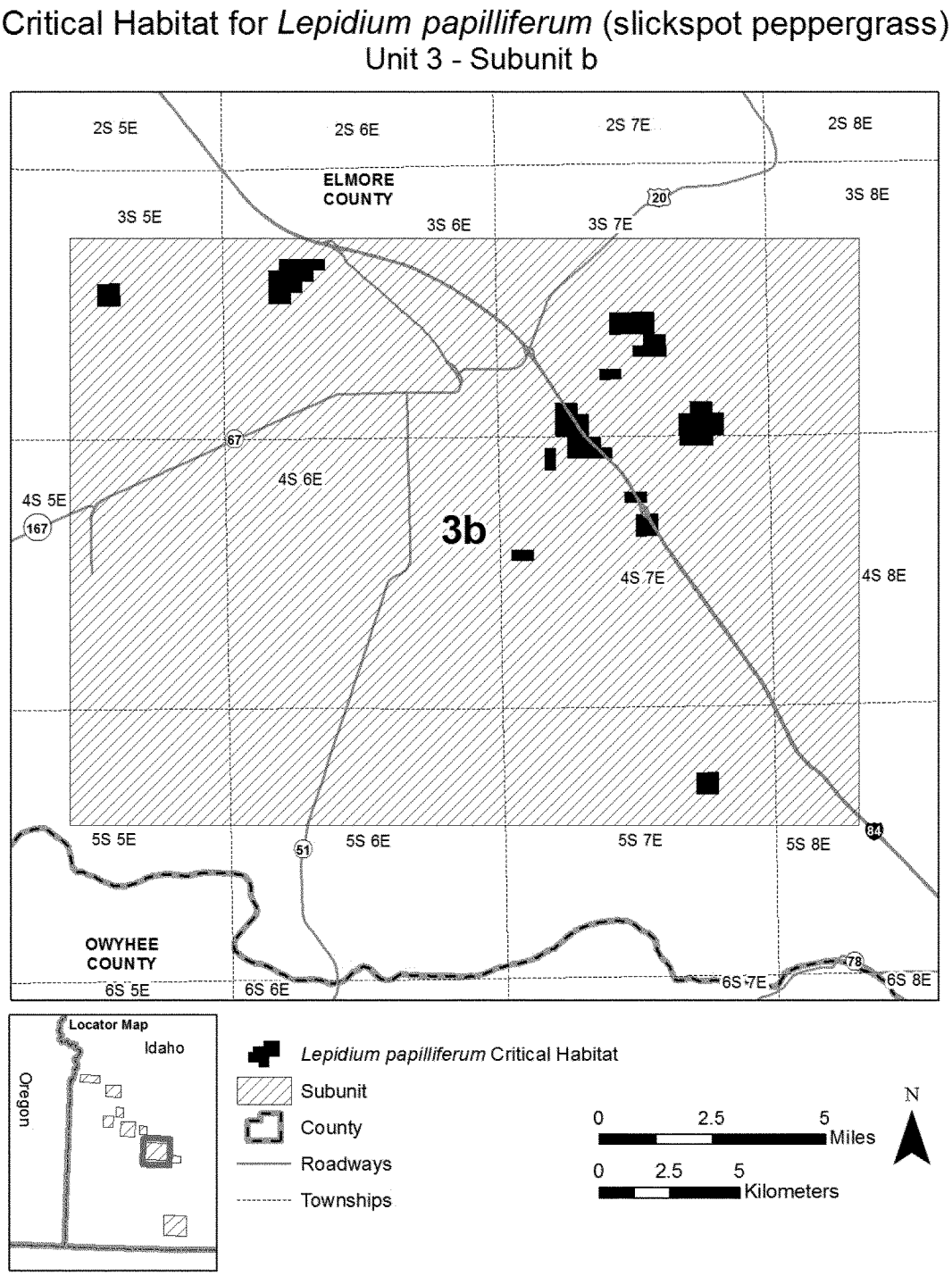
BILLING CODE 4310–55–P

(8) Unit 3: Elmore County, Idaho.

(i) Map of Unit 3, Subunit a, follows:



(ii) Map of Unit 3, Subunit b, follows:



(iii) Map of Unit 3, Subunit c, follows:

* * * * *

(9) Unit 4: Owyhee County, Idaho. Map of Unit 4 follows:

* * * * *

Dated: February 5, 2014.

**Rachel Jacobson,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2014–03134 Filed 2–11–14; 8:45 am]

**BILLING CODE 4310–55–C**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R1–ES–2007–0024; FXES11130900000C6–145–FF09E42000]**

**RIN 1018–AU96**

## Endangered and Threatened Wildlife and Plants; Removing the Hawaiian Hawk From the Federal List of Endangered and Threatened Wildlife

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; document availability and reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the August 6, 2008, proposed rule to remove the Hawaiian hawk or Io (*Buteo solitarius*) from the List of Endangered and Threatened Wildlife (List) under the Endangered Species Act of 1973, as amended (Act). Comments submitted during the 2008 comment period and 2009 reopened comment periods do not need to be resubmitted, and will be fully considered in preparation of our final rule. However, we invite comments on the new information presented in this document relevant to our consideration of the status of Hawaiian hawk. We encourage those who may have commented previously to submit additional comments, if appropriate, in light of this new information. Further, we are again making available for public review the draft post-delisting monitoring plan for the Hawaiian hawk, and we invite comments on that draft plan.

**DATES:** The comment period for the proposed rule published August 6, 2008, at 73 FR 45680 is reopened. To ensure that we are able to consider your comments and information, they must be received or postmarked no later than April 14, 2014. Please note that, if you are using the Federal eRulemaking Portal (see **ADDRESSES**, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date. We may not be able to address or incorporate information that we receive after the above requested date.

**ADDRESSES:** *Document availability:* Electronic copies of the 2008 proposed delisting of the Hawaiian hawk, comments received, and the draft post-delisting monitoring plan (draft PDM Plan) can be obtained from the Web sites *http://www.regulations.gov* (under Docket No. FWS–R1–ES–2007–0024) or *http://www.fws.gov/pacificislands.* To request a hardcopy of the proposed rule or the draft PDM Plan, write to: Field Supervisor, Attention: Hawaiian Hawk Proposed Delisting/Draft PDM Plan, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Rm. 3–122, Honolulu, HI 96850; or call 808–792–9400; or send an email request to *jay_nelson@fws.gov.*

*Written comments:* You may submit comments and information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for docket number FWS–R1–ES–2007–0024. Please ensure you have found the correct document before submitting your comments.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2007–0024; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments and information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more details).

**FOR FURTHER INFORMATION CONTACT:** Loyal Mehrhoff, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96850; telephone (808–792–9400); or facsimile (808–792–9581). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Previous Federal Actions

The Hawaiian hawk was added to the U.S. Department of the Interior's list of endangered species on March 11, 1967 (32 FR 4001), in accordance with section 1(c) of the Endangered Species Preservation Act of October 15, 1966 (80 Stat. 926; 16 U.S.C. 668aa(c)). Its status as an endangered species was retained under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). A recovery plan for the Hawaiian hawk was published on May 9, 1984 (Service 1984).

The Service published a proposed rule to reclassify the Hawaiian hawk from endangered to threatened on August 5, 1993 (58 FR 41684), based on Griffin's (1985, p. 25) preliminary population estimate of 1,400 to 2,500 adult birds and because it was discovered that the species occupied, and nested in, nonnative forests and exploited nonnative prey species as a food resource. However, the proposal was not finalized; during the comment period, several commenters expressed concerns that the population data used in the proposal were not current and there was not enough known about the hawk's breeding success to warrant downlisting. In response, in 1997, the Service formed the Io Recovery Working Group (IRWG), the mission of which was to provide oversight and advice on aspects of the recovery of the Hawaiian hawk.

On February 3, 1997, we received a petition from the National Wilderness Institute to delist the Hawaiian hawk. We responded to that petition in a letter dated June 19, 1998, indicating that we could not immediately work on the petition due to higher priority listing and delisting actions.

We published a proposed rule to delist the Hawaiian hawk, due to recovery, on August 6, 2008, with a 60-day comment period that closed October 6, 2008 (73 FR 45680). The proposed delisting was based on several studies that had shown the range-wide population estimates had been stable for at least 20 years and this species was not threatened with becoming endangered throughout all or a significant portion of its range in the foreseeable future.

We made available the draft post-delisting monitoring plan for the Hawaiian hawk (draft PDM plan) on February 11, 2009 (74 FR 6853), with a 60-day comment period that closed April 13, 2009. In that same document, we reopened the comment period for the proposed delisting rule for 60 days, also ending April 13, 2009.

We published a schedule of public hearings on the proposed rule on June 5, 2009 (74 FR 27004), to allow interested parties an opportunity to comment on the proposed rule and draft PDM plan, and we reopened the proposal's comment period for another 60 days, ending August 4, 2009. We held public hearings on June 30, 2009,

in Hilo, Hawaii, and on July 1, 2009, in Captain Cook, Hawaii.

**Background**

In this document, we will only discuss new information pertinent to the proposed delisting of the Hawaiian hawk. For a more detailed description of the Hawaiian hawk, its status, its threats, and a summary of factors affecting the species, please refer to the August 6, 2008, proposed rule to delist the species (73 FR 45680; see **ADDRESSES**) and the recovery plan (*http://ecos.fws.gov/docs/recovery_plan/840509.pdf*). During the comment periods and public hearings following the August 6, 2008, proposed rule to delist the species, we received comments from 3 independent biologists with expertise in the ecology of the Hawaiian hawk, 5 comments from State of Hawaii and county agencies, and 118 comments from the general public.

**New Information**

During the comment periods, we received new or updated information on projected urban growth rates and conversion of agriculture lands to unsuitable hawk habitat, both of which we previously identified and analyzed in the proposed rule. Also, we received more information on the potential effects of climate change on Hawaiian hawk habitat. The majority of relevant information that has become available since our 2008 proposal to delist the Hawaiian hawk is from public comments, recent publications, and further evaluation of existing information.

We funded an island-wide survey of Hawaiian hawks that was completed in the summer of 2007 to determine if there had been any population change since 1998 to 1999 and to better understand possible regional differences in hawk density, habitat use, and habitat quality (Gorresen *et al.* 2008). Island-wide survey results were summarized in the August 6, 2008, proposed rule (73 FR 45680). To evaluate possible regional differences in hawk density and habitat use, the researchers divided the hawk's range into four regions: Hamakua, Puna, Kau, and Kona, based on a combination of climatic, geological, and vegetation factors and contiguity in land cover.

Habitat and region were found to be significantly associated with Hawaiian hawk density (Gorresen *et al.* 2008, p. 15). Rankings of combined 1998 and 2007 hawk densities showed that Puna supported lower hawk numbers generally for all habitats compared to other regions (Gorresen *et al.* 2008, p. 16). In the Kona region, mature native forest and mature native forest with grass understory had greater hawk densities than areas dominated by orchards, shrubland, pioneer native forest, and urban habitats (Gorresen *et al.* 2008, p. 15). Native-exotic forest in Hamakua had more than four times the hawk density than similar habitats in Puna, while mature native forest in Kona supported greater densities of hawks than the same habitat in Puna (Gorresen *et al.* 2008, p. 15).

The researchers delineated the Hawaiian hawk's breeding range by mapping mid- to tall-stature wet to mesic native and exotic forest, and foraging habitat available within 1 mile (mi) (2.86 kilometers (km)) of forest patches (distance to foraging habitat was based on the diameter of the largest adult hawk home range) (Gorresen *et al.* 2008, p. 11). The resulting 2,221-square-mile (sq-mi) (5,755-square-kilometer (sq-km)) breeding range included all hawks detected during the 1998 to 1999 and 2007 surveys, and was approximately 6 percent smaller than the usable habitat area for hawks determined by Klavitter *et al.* (2003, p. 170).

We examined trends in human population, urban and exurban growth, and land subdivision over the past three decades for Hawaii County to better understand the history of habitat change on Hawaii and the potential effects of these factors on Hawaiian hawk habitat and density in the future. The Hawaii Department of Business, Economic Development and Tourism (HDBEDT 2012) projected the population of Hawaii County to grow 1.6 percent annually from 2010 to 2040, a 32 percent population increase over 20 years.

The number of private residential construction permits issued annually by Hawaii County for single-family dwellings more than doubled from 1995 to 2007, from 908 to 1,852 permits (County of Hawaii 2010, Table 16.7). The total number of housing units built nearly doubled from 1984 to 2007, from 39,164 to 77,650 units (County of Hawaii 2010, Tables 16.9 and 16.10). The pace of home construction was most rapid in the Puna and North Kona Districts, with increases of 105.6 and 67.7 percent, respectively, in the total number of housing units built from 1990 to 2000 (County of Hawaii 2010, Table 16.13). We expect residential and exurban construction for Hawaii County to continue at a similar pace in the foreseeable future as indicated by expected human population growth for Hawaii County and home construction for the island of Hawaii for the last three decades.

We also analyzed tax-map keys (TMKs) for the years 1996 and 2009 to better understand land subdivision on Hawaii and how this might relate to potential changes in Hawaiian hawk habitat (Nelson and Metevier 2010, pp. 1–3). Over this time period, the number of land parcels less than 1 acre (ac) in size increased almost three fold from 25,925 to 74,620 parcels. There was a greater than three-fold increase in the land area for parcels of this size, from 7,680 ac (3,107 hectares (ha), 31 sq km) to 24,458 ac (9,897 ha, 99 sq km); the latter is equal to approximately 1.7 percent of the hawk's current range. Almost half of the subdivision activity occurred in the Puna region. Parcels of 1 acre or less in size do not require a grubbing permit if grubbing (i.e., vegetation clearing) does not alter the general and localized drainage pattern with respect to abutting properties (County of Hawaii 2005a, p. 10–2).

Of the total land area in the Puna region, 46.2 percent is zoned for agriculture. Large areas of these lands were subdivided during the 1950s and 1960s, with lot sizes ranging from 0.2 to 6 ac (0 to 2 ha) (Punaguide 2013, p. 2). More than 51,000 ac (20,638 ha) (23 percent) of lands zoned for agriculture and other uses were subdivided from 1958 to 1973 in the Puna District south of the Hawaii Belt Road (Punaguide 2013, pp. 2–3). Almost all lands zoned for agriculture between Hilo Town and Volcano Village north of the Hawaii Belt Road were subdivided to some extent between 1996 and 2009 (Nelson and Metevier 2010, pp. 1–2). Many of the areas south of the Hawaii Belt Road are developed or are currently being developed as low density residential housing (Punaguide 2013, pp. 2–3).

Hunting of prey by Hawaiian hawk may be inhibited in areas with close standing trees that limit the hawk's ability to maneuver in flight, such as groves of nonnative strawberry guava (*Psidium cattleianum*), which dominates as much as 10 percent (37.5 sq mi, 97 sq km) of the forest area in conservation district lands in the Puna region (State of Hawaii 2010, p. 114). Because of its ability to form impenetrable groves of close standing trees, the invasion of large areas of native forests by strawberry guava poses a significant and serious threat to Hawaiian hawk habitat. Recent research suggests projected temperature and precipitation change in Hawaii will likely facilitate the spread of strawberry guava from its present distribution in lowland wet- and mesic-forest into higher elevation montane forests dominated by native species (Denslow 2008, p. 1). It is projected that within

100 years strawberry guava, if not controlled, could invade native forests to elevations as high as 6,000 feet (ft) (1,800 meters (m)) (McDermitt 2009, p. 1; Price *et al.* 2009, slides 22–23). This expansion would have the potential to degrade up to 36 percent of the hawk's range to an elevation of 4,500 ft (1,500 m) (Gorresen *et al.* 2008, p. 25). Based on the above projections, we anticipate approximately 7 percent of current usable Hawaiian hawk habitat could be degraded in the next 20 years by the continued spread of strawberry guava into native forests. A biocontrol agent for strawberry guava, the Brazilian scale insect *Tectococcus ovatus,* was released in 2012 on Hawaii in two demonstration plots. Insects released have established and begun to reproduce and spread within individual trees, and the agent is planned to be released within native forest sites (Chaney and Johnson in HCC 2013, p. 74). It is too early, however, to know what effect this may have on guava tree vigor and rate of spread.

The August 6, 2008, proposed rule (73 FR 45680, pp. 45684–45685) analyzed the potential threat to Hawaiian hawk habitat posed by the conversion of current agricultural lands to crops for biodiesel fuel production (Gorresen *et al.* 2008, p. 10). That analysis was based on a report prepared in 2006 for the State of Hawaii Department of Agriculture that identified agricultural lands on the island of Hawaii that would be suitable for such crop production (Poteet 2006, pp. 27–28). Construction and testing of biodiesel facilities is progressing, and one facility is now located on Hawaii Island. In addition to other information we request in the Public Comments section, below, we request new information on the actual conversion of agricultural land to crops for biodiesel fuel production, including former and current crop type and acreage.

Hawaiian hawks frequently nest in native ohia (*Metrosideros polymorpha,*an evergreen tree in the myrtle family). Within the past 5 years, landowners in lower Puna District have noticed an increased rate of ohia dieback (Friday and Friday 2013, entire), a phenomenon where trees affected show progressive dieback accompanied by browning of the leaves, reduction in leaf size, and death of all or part of the crown (Hodges *et al.* 1986, p. ii.). Ohia dieback occurs on Hawaii in all areas with ohia trees, and is attributed to several causes including volcanic emissions, wet soil conditions, displacement by native tree fern (*Cibotium* spp.), dense stands of ohia trees, and proximity to fault lines (Hodges *et al.* 1986, p. 4; Friday and Friday 2013, p. 2). Ohia dieback is localized, and large areas of healthy ohia forest often remain adjacent to dieback areas.

Although new information shows negative habitat trends due to urbanization and nonnative plant species invasion, efforts at habitat restoration that benefit the Hawaiian hawk are achieving success in several areas including reforestation at the Hakalau Forest National Wildlife Refuge, and fencing and ungulate removal at Puu Waawaa Forest Bird Sanctuary and parts of the State's Natural Area Reserve System (Gorresen *et al.* 2008, p. 26). Management goals for native forests damaged by ungulate browsing and grazing usually are to restore ecosystem structure to improve and maintain watershed values and promote native species diversity (TMA 2007, p. 26). The State of Hawaii's initiative, The Rain Follows the Forest, for example, identifies priority watersheds and outlines on-the-ground actions and projects required to sustain Hawaii's critical water sources (DLNR 2011, p. 1). Currently, only 10 percent of the priority watershed areas are protected; however, The Rain Follows the Forest seeks to double the amount of protected watershed areas, including some areas on Hawaii Island, in just 10 years. The Kohala Watershed Partnership, Mauna Kea Watershed Alliance, and Three Mountain Alliance are currently conducting work to remove ungulates and improve or restore over 19,000 ac (7,689 ha) of forest area on Hawaii Island (DLNR 2011, p. 16).

In addition, forest restoration programs like the Hawaiian Legacy Reforestation Initiative, U.S. Department of Agriculture Forestry Program, and Hawaii's Forest Stewardship Program benefit Hawaiian hawk habitat through restoration of relatively intact native forests and reforestation of pasture areas. The focus of these programs over the last few decades has been the development of a native hardwoods forestry industry with native koa (*Acacia koa*) as the species of primary interest. Suitability of koa plantations for Hawaiian hawk foraging and nesting has not been studied, and hawk use of these areas may be variable, because koa plantations likely differ in their suitability as hawk habitat depending upon age of koa stands, stand density, and over-story characteristics related to harvest methods used.

Despite habitat concerns, as explained in our August 6, 2008, proposed rule, the Hawaiian hawk is resilient enough to maintain itself over time in a variety of habitat types including native, native-exotic, and exotic forest (Klavitter *et al.* 2003, p. 170).

**Post-Delisting Monitoring Plan**

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been delisted due to recovery. The purpose of this post-delisting monitoring (PDM) is to verify that the species remains secure from risk of extinction after it has been removed from the protections of the Act. The PDM is designed to detect the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires cooperation with the States in development and implementation of PDM programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation post-delisting.

The Service has developed a draft PDM plan for Hawaiian hawk in cooperation with the State of Hawaii Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW); the National Park Service (NPS); and the U.S. Geological Survey, Biological Resources Division (BRD). The PDM includes monitoring the Hawaiian hawk population every 5 years for 20 years and is designed to verify that the Hawaiian hawk remains secure from risk of extinction after its removal from the Federal List of Endangered and Threatened Wildlife. We made available the draft PDM plan on February 11, 2009 (74 FR 6853), with a 60-day comment period that closed April 13, 2009. With this document, we are again soliciting public comments and peer review on the draft PDM plan. All comments on the draft PDM plan from the public and peer reviewers will be considered and incorporated into the final PDM plan as appropriate.

The following is a brief summary of the draft PDM plan. Please see the plan, available at *http://www.fws.gov/pacificislands* or at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2007–0024, for more details. The PDM plan for the Hawaiian hawk covers a 20-year period, and will include abundance, distribution, and disease monitoring. Variable circular

plot (VCP) surveys (Gorresen *et al.* 2008, pp. 10–11) for Hawaiian hawk will be conducted from March through July every 5 years, following the stations used in the 2007 surveys. Densities will be used to extrapolate population estimates, and differences in estimated hawk densities will be compared among years, regions, and habitats. All dead Hawaiian hawks found by field crews during VCP surveys or reported by the public will be salvaged and necropsied to determine the cause of death. Monitoring cooperators will report all dead, injured, and diseased birds to the Service's Pacific Islands Fish and Wildlife Office, which will collate information on disease, cause of injury or death, location, date, and any other relevant data.

If monitoring reveals any cause for concern, such as reduced numbers of Hawaiian hawk or decreased range, a more comprehensive ground assessment of the monitored populations, or addition of extra monitoring sites, may be necessary. If monitoring concerns become sufficiently high, we will conduct a full status review of the species to determine if relisting is warranted.

**Public Comments**

We intend that any final action resulting from the proposal will be based on the best scientific and commercial data available and will be as accurate and effective as possible. To ensure our determination is based on the best available scientific and commercial information, we request information on the Hawaiian hawk from governmental agencies, native Hawaiian groups, the scientific community, industry, and any other interested parties. We request comments or suggestions on our August 6, 2008 (73 FR 45680), proposal to delist the Hawaiian hawk; our draft PDM plan; new information presented in this **Federal Register** document; and any other information. Specifically, we seek information on:

(1) The species' biology, range, and population trends, including:

(a) Life history, ecology, and habitat use of Hawaiian hawk, including utilization of koa plantations and exurban areas;

(b) Range, distribution, population size, and population trends;

(c) Positive and negative effects of current and foreseeable land management practices on Hawaiian hawk, including conservation efforts associated with watershed partnerships and The Rain Follows the Forest initiative; patterns of land subdivision and development; effects on native forest of introduced plant species; conversion of land to biodiesel production, forestry, and diversified agriculture; and potential effects of biocontrol efforts on strawberry guava; and

(d) Potential effects of temperature and rainfall change on fire frequency and intensity and forest type and distribution.

(2) The factors, as detailed in the August 6, 2008, proposed rule (73 FR 45680), that are the basis for making a listing/delisting/downlisting determination for a species under section 4(a) of the Act, which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) The draft post-delisting monitoring plan.

You may submit your information by one of the methods listed in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we receive and use in preparing the proposal will be available for you to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the Service's Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

If you submitted comments or information previously on the August 6, 2008, proposed rule (73 FR 45680); the February 11, 2009, document that made available our draft PDM plan (74 FR 6853); or our June 5, 2009, publication announcing public hearings and reopening the proposal's comment period (74 FR 27004), please do not resubmit them. These comments have been incorporated into the public record and will be fully considered in the preparation of our final determination.

The Service will finalize a new listing determination after we have completed our review of the best available scientific and commercial information, including information and comments submitted during this comment period. In summary, the outcome of our review could result in: (1) A final rule to delist the Hawaiian hawk; (2) a final rule to downlist (i.e., reclassify to threatened) the Hawaiian hawk; or (3) a withdrawal of the 2008 proposed rule to delist the species.

**References Cited**

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Service's Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this document are staff of the Service's Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 4, 2014.

**Rowan W. Gould,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2014–02982 Filed 2–11–14; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[FWS–R1–ES–2013–0117; MO 92210–0–0008 B2]**

**RIN 1018–BA27**

## Endangered and Threatened Wildlife and Plants; Threatened Status for Lepidium papilliferum (Slickspot Peppergrass) Throughout Its Range

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Reconsideration of final rule and request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), amend and update, and provide and request further information in regard to, our October 8, 2009, final rule listing *Lepidium papilliferum* (slickspot peppergrass) as a threatened species throughout its range under the Endangered Species Act of 1973 (ESA or Act). We are addressing the Idaho District Court's remand of our rule because the Court asked us to

reconsider the definition of the ''foreseeable future'' in regard to this particular species. We announce the opening of a public comment period seeking input on our interpretation of the foreseeable future as it pertains specifically to *L. papilliferum.* We will also consider any new information regarding population status, trends, or threats that has become available since our last review of the status of the species in 2009.

**DATES:** We will consider comments received or postmarked on or before March 14, 2014. Please note that comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision.

**ADDRESSES:** Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for FWS–R1–ES–2013–0117, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2013–0117; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Acting State Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709; telephone 208–378–5243; facsimile 208–378–5262. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Executive Summary

### *Purpose of This Document*

We are responding to the U.S. District Court for the District of Idaho's August 8, 2012, Memorandum Decision and Order vacating our October 8, 2009, final rule listing *Lepidium papilliferum* (slickspot peppergrass) as a threatened species (74 FR 52014) (2009 final listing rule) and remand of the rule to the Service for further consideration consistent with the Court's decision. The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' The Act does not define the term ''foreseeable future.'' With respect to the Service's finding of threatened status for *L. papilliferum,* the Court was supportive, stating that ''. . . the Service's finding underlying the above conclusion [that *L. papilliferum* is likely to become an endangered species within the foreseeable future] are (*sic*) supported by the administrative record and entitled to deference.'' *Otter* v. *Salazar,* Case No. 1:11–cv–358–CWD, at 50 (D. Idaho, Aug. 8, 2012) *(Otter* v. *Salazar).* However, the Court took issue with the Service's application of the concept of the ''foreseeable future'' in the 2009 final listing rule. Although it found ''no problem with the agency's science,'' the Court stated that ''without a viable definition of foreseeable future, there can be no listing under the ESA.'' *Otter* v. *Salazar,* at 55. Based on this conclusion, the Court vacated the 2009 listing determination and remanded it to the Secretary for further consideration consistent with the Court's decision.

We are proposing to reinstate threatened status of *Lepidium papilliferum* under the Act with an amended definition of the foreseeable future, consistent with the Court's opinion and applied specifically to this species. We will also evaluate any new scientific information that may have become available since our 2009 final listing rule. This will ensure that our present determination remains based on the best scientific and commercial data available. We are seeking public comments on our amended definition of foreseeable future and to assist us in our evaluation of any new scientific information pertaining to this species.

### *The Basis for Our Action*

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of the factors relevant to *Lepidium papilliferum* is discussed below and in our 2009 final listing rule.

### Public Comments

We will base any final action on the best scientific and commercial data available. Therefore, we are seeking comments from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested party concerning the reinstatement of threatened status for *Lepidium papilliferum.* We particularly seek comments concerning:

(1) Our interpretation of the term ''foreseeable future'' and its application to our evaluation of the status of *Lepidium papilliferum;*

(2) Our evaluation of new scientific information concerning the range, distribution, population size and trends, and threats to the species that has become available since publication of the 2009 final listing rule;

(3) Our choice of the threshold of 80 to 90 percent loss of remaining unburned habitat as the point at which the species will be in danger of extinction (see discussion below under Factors Affecting the Species for details on our rationale supporting our conclusion);

(4) Any additional scientific information concerning the range, distribution, population size and trends, or threats to the species that has become available since publication of the 2009 final listing rule that we have not already presented and considered here; and

(5) Current or planned activities in the subject area that were not analyzed in the 2009 final listing rule and their possible effect on this species.

We will consider all comments and information received during the comment period on this rulemaking during our preparation of a final determination. Comments previously submitted on the proposed listing of *Lepidium papilliferum* need not be resubmitted; they have already been incorporated into the public record and will be fully considered in the final decision.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information,

although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

In making a final decision on this matter, we will take into consideration the comments and any additional information we receive. Comments and materials received, as well as some of the supporting documentation used in the preparation of a final decision, will be available for public inspection on *http://www.regulations.gov.* All information we use in making our decision is available by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709; telephone 208–378–5243; facsimile 208–378–5262 (see **FOR FURTHER INFORMATION CONTACT**).

## Previous Federal Actions

On July 15, 2002, we proposed to list *Lepidium papilliferum* as an endangered species (67 FR 46441). On January 12, 2007, we published a document in the **Federal Register** withdrawing the proposed rule (72 FR 1622), based on a determination at that time that listing was not warranted (for a description of Federal actions concerning *L. papilliferum* between the 2002 proposal to list and the 2007 withdrawal, please refer to the 2007 withdrawal document). On April 6, 2007, Western Watersheds Project filed a lawsuit challenging our decision to withdraw the proposed rule to list *L. papilliferum.* On June 4, 2008, the U.S. District Court for the District of Idaho (Court) reversed the decision to withdraw the proposed rule, with directions that the case be remanded to the Service for further consideration consistent with the Court's opinion (*Western Watersheds Project* v. *Kempthorne,* Case No. CV 07–161–E–MHW (D. Idaho)).

After issuance of the Court's remand order, we published a public notification of the reinstatement of our July 15, 2002, proposed rule to list *Lepidium papilliferum* as an endangered species and announced the reopening of a public comment period on September 19, 2008 (73 FR 54345). To ensure that our review of the species' status was based on complete information, we announced another reopening of the comment period on March 17, 2009 (74 FR 11342). On October 8, 2009, we published a final rule (74 FR 52014) listing *L. papilliferum* as a threatened species throughout its range.

On November 16, 2009, Idaho Governor C. L. ''Butch'' Otter, the Idaho Office of Species Conservation, Theodore Hoffman, Scott Nicholson, and L.G. Davison & Sons, Inc., filed a complaint in the U.S. District Court for the District of Columbia challenging the 2009 final listing rule under the Administrative Procedure Act and the Endangered Species Act. Subsequently, the issue was transferred to the U.S. District Court for the District Court of Idaho (Court), and the parties involved consented to proceed before a Magistrate Judge. On August 8, 2012, the Court vacated the final rule listing *Lepidium papilliferum* as a threatened species under the Act, with directions that the case be remanded to the Service for further consideration consistent with the Court's opinion. *Otter* v. *Salazar,* Case No. 1:11–cv–358–CWD (D. Idaho). This document constitutes our reconsideration of the issue remanded by the Court.

## Background and New Information

A complete description of *Lepidium papilliferum,* including a discussion of its life history, ecology, habitat requirements and monitoring of extant populations, can be found in the October 8, 2009, final rule (74 FR 52014). However, to ensure that we are considering the best scientific and commercial data available in our final decision, here we present new scientific information that has become available to us since our 2009 determination of threatened status, and evaluate that new information in light of our previous conclusions regarding the status of the species.

### *New Information Related to the Proposed Listing of Lepidium papilliferum*

We are evaluating information presented in the 2009 final listing rule, as well as new information, regarding population status, trends, or threats that has become available since 2009, including current element occurrence (EO) data provided to us by the Idaho Fish and Wildlife Information System (IFWIS) database (formerly the Idaho Natural Heritage Program database), updated fire history data, the new rangewide Habitat Integrity and Population (HIP) monitoring data, information on current developments being proposed within the range of *L. papilliferum,* and the most current data on seed predation by Owyhee harvester ants (*Pogonomyrmex salinus*), as described in the Factors Affecting the Species section, below.

Relatively limited new data regarding population abundance or trends has become available since our 2009 final listing rule. In 2011 and 2012, the total number of *Lepidium papilliferum* plants counted was the lowest since 2005, when complete counts for this species were initiated, with 16,462 plants in 2011 and 9,202 plants in 2012 (Kinter 2012, *in litt.*). Previously, the lowest total number of plants counted occurred in 2006, with 17,543 plants, and the highest count was in 2010, with 58,921 plants (IDFG 2012, p. 5). Meyer *et al.* (2005, p. 21) suggest that *L. papilliferum* relies on years with extremely favorable climactic elements to resupply the seed bank (i.e., high bloom years with good weather), and during unfavorable years, it is dependent upon a persistent seed bank to maintain the population.

In 2009, there were 80 extant *Lepidium papilliferum* EOs documented according to IFWIS data. Survey efforts over the past few years have located additional *L. papilliferum* occupied sites. According to IFWIS data, existing EOs have been expanded (and in some cases merged with other EOs to meet the definition of an EO, by grouping occupied slickspots that occur within 1 kilometer (km) (0.6 miles (mi)) of each other), and eight new EOs have been located. According to the most recent IFWIS data, there are now 87 extant *L. papilliferum* EOs (although it would seem there should be 88, the apparent discrepancy in numbers is due to the intervening merging and deleting of EOs between 2009 and the present, as documented in the record). The discovery of some new occupied sites is not unexpected given not all potential *L. papilliferum* habitats in southwest Idaho have been surveyed. While the

discovery of these new sites is encouraging, they are located near or in the vicinity of existing EOs, and therefore do not expand the known range of the species; they are all subject to the same threats affecting the species, and their associated ranks indicate they are not high-quality EOs. The existing EOs have not been re-ranked since 2005; however, the ranks given to the new EOs include one BC, one BD, three C, two CD, and one D (IFWIS data from January 2013). See the Monitoring of *Lepidium papilliferum* Populations section in the 2009 final listing rule for a more detailed discussion of EOs.

As discussed below in the section Factors Affecting the Species, the new information generally supports our 2009 conclusions on the present distribution of *Lepidium papilliferum,* its status and population trends, and how the various threat factors are affecting the species.

**Foreseeable Future**

As indicated earlier, the Act defines a ''threatened species'' as any species (or subspecies or, for vertebrates, distinct population segments) that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act does not define the term ''foreseeable future.'' In a general sense, the foreseeable future is the period of time over which events can reasonably be anticipated; in the context of the definition of ''threatened species,'' the Service interprets the foreseeable future as the extent of time over which the Secretary can reasonably rely on predictions about the future in making determinations about the future conservation status of the species. It is important to note that references to ''reliable predictions'' are not meant to refer to reliability in a statistical sense of confidence or significance; rather the words ''rely'' and ''reliable'' are intended to be used according to their common, non-technical meanings in ordinary usage. In other words, we consider a prediction to be reliable if it is reasonable to depend upon it in making decisions, and if that prediction does not extend past the support of scientific data or reason so as to venture into the realm of speculation.

In considering threats to the species and whether they rise to the level such that listing the species as a threatened or endangered species is warranted, we assess factors such as the imminence of the threat (is it currently affecting the species or, if not, when do we expect the effect from the threat to commence, and whether it is reasonable to expect the threat to continue into the future), the scope or extent of the threat, the severity of the threat, and the synergistic effects of all threats combined. If we determine that the species is not currently in danger of extinction, then we must determine whether, based upon the nature of the threats, it is reasonable to anticipate that the species may become in danger of extinction within the foreseeable future. As noted in the 2009 Department of the Interior Solicitor's opinion on foreseeable future, ''in some cases, quantifying the foreseeable future in terms of years may add rigor and transparency to the Secretary's analysis if such information is available. Such definitive quantification, however, is rarely possible and not required for a foreseeable future analysis'' (M–37021, January 16, 2009; p. 9).

In some specific cases where extensive data were available to allow for the modeling of extinction probability over various time periods (e.g., Greater Sage-grouse (75 FR 13910; March 23, 2010), the Service has provided quantitative estimates of what may be considered to constitute the foreseeable future. We do not have such data available for *Lepidium papilliferum.* Therefore, our analysis of the foreseeable future for the purposes of assessing the status of *L. papilliferum* must rely on the foreseeability of the relevant threats to the species over time, as described by the Solicitor's opinion (M–37021, January 16, 2009; p. 8). The foreseeable future extends only so far as the Secretary can explain reliance on the data to formulate a reliable prediction, based on the extent or nature of the data currently available, and to extrapolate any trend beyond that point would constitute speculation.

In earlier evaluations of the status of *Lepidium papilliferum,* the Service assembled panels of species and ecosystem experts to assist in our review through a structured decision-making process. As part of those evaluations, to help inform the decisions to be made by the Service managers, experts were asked to provide their best estimate of a timeframe for extinction of *L. papilliferum,* and were allowed to distribute points between various predetermined time categories, or to assign an extinction probability of low, medium, or high between time categories (e.g., 1 to 20 years, 21 to 40 years, 41 to 60 years, 61 to 80 years, 81 to 100 years, 101 to 200 years, and 200 years and beyond). We note that this type of exercise was not intended to provide a precise quantitative estimate of the foreseeable future, nor was it meant to provide the definitive answer as to whether *L. papilliferum* is likely to become an endangered species within the foreseeable future. Rather, this type of exercise is used to help inform Service decision-makers, and ultimately the Secretary, as to whether there is broad agreement amongst the experts as to extinction probability within a certain timeframe.

In fact, the species experts expressed widely divergent opinions on extinction probabilities over various timeframes. As an example, in 2006, the estimated timeframes for extinction from seven different panel members fell into every time category presented ranging from 21 to 40 years up to 101 to 200 years. Because the species experts' divergent predictions were based on ''reasonable, best educated guesses,'' we did not consider the range of timeframes to represent a prediction that can be reasonably relied upon to make a listing determination. As noted in the Solicitor's opinion, ''the mere fact that someone has made a prediction concerning the future does not mean that the thing predicted is foreseeable for the purpose of making a listing determination under section 4 of the ESA'' (M–37021, January 16, 2009; p. 10).

In our 2009 final listing rule, we did not present species experts with predetermined potential timeframes within which to estimate extinction probability for the species. Rather, we asked peer reviewers to provide us with their estimated projection of a time period for reliably predicting threat effects or extinction risk for the species. In response, most peer reviewers declined, stating that such future projections were likely speculative. One peer reviewer suggested that given current trends in habitat loss and degradation, *L. papilliferum* ''is likely at a tipping point in terms of its prospect for survival,'' and doubted that the species would persist in sustainable numbers beyond the next 50 to 75 years (74 FR 52055).

As suggested in the Solicitor's opinion, for the purposes of the present analysis, we are relying on an evaluation of the foreseeability of threats and the foreseeability of the effect of the threats on the species, extending this time period out only so far as we can rely on the data to formulate reliable predictions about the status of the species, and not extending so far as to venture into the realm of speculation. Therefore, in the case of *Lepidium papilliferum,* we conclude that the foreseeable future is that period of time within which we can reliably predict whether or not *Lepidium papilliferum* is likely to become an endangered species as a result of the effects of wildfire, invasive nonnative

plants, and other threats to the species. As explained below, with respect to the principal threat factors, the foreseeable future for *Lepidium papilliferum* is at least 50 years.

**Factors Affecting the Species**

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

A detailed discussion and analysis of each of the threat factors for *Lepidium papilliferum* can be found in the final listing rule. For the purpose of this document, we are limiting our discussion of foreseeable future to the threats we consider significant in terms of contributing to the present or threatened destruction, modification, or curtailment of *L. papilliferum's* habitat or range. These include the two primary threat factors: altered wildfire regime (increasing frequency, size, and duration of wildfires), and invasive, nonnative plant species (e.g., *Bromus tectorum* (cheatgrass)); as well as contributing threat factors of planned or proposed development, habitat fragmentation and isolation, and the emerging threat from seed predation by Owyhee harvester ants (*Pogonomyrmex salinus*). Here we present a brief summary of each of the primary threats to *L. papilliferum* for the purposes of considering new information received since 2009 and of analyzing these threats in the context of the foreseeable future, in order to reconsider whether *L. papilliferum* meets the definition of a threatened species.

In considering potential threatened species status for *Lepidium papilliferum,* it is useful to first describe what endangered species status (in danger of extinction throughout all or a significant portion of its range) for *L. papilliferum* would be. *Lepidium papilliferum* will be in danger of extinction (an endangered species) when the anticipated and continued synergistic effects of increased wildfire, invasive nonnative plants, development, and other known threats affect the remaining extant *L. papilliferum* habitats at a level where the species would persist only in a small number of isolated EOs, most likely with small populations and fragmented from other extant populations. Wildfire usually results in a mosaic of burned and unburned areas, and while some EOs may persist for a time in unburned habitat ''islands'' within burned areas, the resulting habitat fragmentation will cause any such EOs to be subject to a high degree of vulnerability, such that they may not have long-term viability. For example, wildfire often leads to a type conversion from native sagebrush-steppe to annual grassland, in which the habitat goes through successional changes resulting in grasslands dominated by invasive nonnative grasses, rather than the slickspot habitat needed by *L. papilliferum.* Therefore, although a few individuals of the species may continue to be found in burned areas, those individuals would be subject to the full impact of the threats acting on the species, and thus be highly vulnerable to extirpation, as detailed in the Summary of Factors Affecting the Species, below. In order to estimate when this might occur, we chose a threshold of 80 to 90 percent loss of or damage to the currently remaining unburned habitat (we are seeking public comment on the appropriateness of this choice of threshold). Should this loss of 80 to 90 percent of current habitat happen, we believe that the remaining 10 to 20 percent of its present habitat would be so highly fragmented that it would detrimentally affect successful insect pollination and genetic exchange, leading to a reduction in genetic fitness and genetic diversity, and a reduced ability to adapt to a changing environment. There would be little probability of recolonization of formerly occupied sites at this point, and remaining small, isolated populations would be highly vulnerable to local extirpation from a variety of threats. In addition, smaller, more isolated EOs could also exacerbate the threat of seed predation by Owyhee harvester ants, as small, isolated populations deprived of recruitment through their seed bank due to seed predation would be highly vulnerable to relatively rapid extirpation. All of these effects are further magnified by the consideration that *L. papilliferum* is a relatively local endemic, and presently persists in specialized microhabitats that have already been greatly reduced in extent (more than 50 percent of known *L. papilliferum* EOs have already been affected by wildfire). Therefore, if *L. papilliferum* should reach this point at which a further 80 to 90 percent of its present remaining habitat is severely impacted by the effects of wildfire, invasive nonnative plants, and other threats, we predict it would then be in danger of extinction.

We have analyzed and assessed known threats impacting *Lepidium papilliferum,* and used the best available information to carefully consider what effects these known threats will have on this species in the future, and over what timeframe, in order to determine what constitutes the foreseeable future for each of these known threats. In considering the foreseeable future as it relates to these threats, we considered information presented in the 2009 final listing rule, and information we have obtained since the publication of that rule, including: (1) The historical data to identify any relevant existing trends that might allow for reliable prediction of the future; (2) any information that suggests these threats may be alleviated in the near term; and (3) how far into the future we can reliably predict that these threats will continue to affect the status of the species, recognizing that our ability to make reliable predictions into the future is limited by the quantity and quality of available data. Below, we provide a summary of our analysis of each known threat, and discuss the information regarding the timing of these threats on which we base our conclusions regarding the application of the foreseeable future.

*Altered Wildfire Regime*

The current altered wildfire regime and invasive, nonnative plant species were cited in the final listing rule as the primary cause for the decline of *Lepidium papilliferum.* The invasion of nonnative plant species, particularly annual grasses such as *Bromus tectorum* and *Taeniatherum caput-medusae* (medusahead), has contributed to increasing the amount and continuity of fine fuels across the landscape, and as a result, the wildfire frequency interval has been shortened from between 60 to 110 years historically to less than 5 years in many areas of the sagebrush-steppe ecosystem at present (Wright and Bailey 1982, p. 158; Billings 1990, pp. 307–308; Whisenant 1990, p. 4; USGS 1999, *in litt.,* pp. 1–9; West and Young 2000, p. 262). These wildfires tend to be larger and burn more uniformly than those that occurred historically, resulting in fewer patches of unburned vegetation, which can affect the post-fire recovery of native sagebrush-steppe

vegetation (Whisenant 1990, p. 4). The result of this altered wildfire regime has been the conversion of vast areas of the former sagebrush-steppe ecosystem to nonnative annual grasslands (USGS 1999, *in litt.,* pp. 1–9). Frequent wildfires can also promote soil erosion and sedimentation (Bunting *et al.* 2003, p. 82) in arid environments such as the sagebrush-steppe ecosystem. Increased sedimentation can result in a silt layer that is too thick for optimal *L. papilliferum* germination (Meyer and Allen 2005, pp. 6–7). Wildfire also damages biological soil crusts, which are important to the sagebrush-steppe ecosystem and slickspots where *L. papilliferum* occur, because the soil crusts stabilize and protect soil surfaces from wind and water erosion, retain soil moisture, discourage annual weed growth, and fix atmospheric nitrogen (Eldridge and Greene 1994 as cited in Belnap *et al.* 2001, p. 4; Johnston 1997, pp. 8–10; Brooks and Pyke 2001, p. 4).

Several researchers have noted signs of increased habitat degradation for *Lepidium papilliferum,* most notably in terms of exotic species cover and wildfire frequency (e.g., Moseley 1994, p. 23; Menke and Kaye 2006, p. 19; Colket 2008, pp. 33–34), but only recently have analyses demonstrated a statistically significant, negative relationship between the degradation of habitat quality, both within slickspot microsites and in the surrounding sagebrush-steppe matrix, and the abundance of *L. papilliferum.* Sullivan and Nations (2009, pp. 114–118, 137) found a consistent, statistically significant, negative correlation between wildfire and the abundance of *L. papilliferum* across its range. Their analysis of 5 years of Habitat Integrity and Population (HIP) monitoring data indicated that *L. papilliferum* ''abundance was lower within those slickspot [sic] that had previously burned'' (Sullivan and Nations 2009, p. 137), and the relationship between *L. papilliferum* abundance and fire is reported as ''relatively large and statistically significant,'' regardless of the age of the fire or the number of past fires (Sullivan and Nations 2009, p. 118). The nature of this relationship was not affected by the number of fires that may have occurred in the past; whether only one fire had occurred or several, the association with decreased abundance of *L. papilliferum* was similar (Sullivan and Nations 2009, p. 118).

The evidence also points to an increase in the geographic extent of wildfire within the range of *Lepidium papilliferum.* Since the 1980s, 53 percent of the total *L. papilliferum* management area acreage rangewide has burned, more than double the acreage burned in the preceding three decades (from the 1950s through 1970s) (Hardy 2013, *in litt.*). Management areas are units containing multiple EOs in a particular geographic area with similar land management issues or administrative boundaries as defined in the 2003 Candidate Conservation Agreement (State of Idaho 2006, p. 9). Based on available information, approximately 11 percent of the total management area burned in the 1950s; 1 percent in the 1960s; 15 percent in the 1970s; 26 percent in the 1980s; 34 percent in the 1990s; and as of 2007, 11 percent in the 2000s (data based on GIS fire data provided by BLM Boise and Twin Falls District; I. Ross 2008, pers. comm. and A. Webb 2008, pers. comm., as cited in Colket 2008, p. 33). Incorporating more recent data (fire data up to 2012), 12 percent of the total management area burned from 2000 to 2009, with 1 percent burning from 2010 to 2012 (Hardy 2013, *in litt.*). Based on the negative relationship observed between fire, *L. papilliferum,* and habitat quality as described above, we conclude that this increase in area burned translates into an increase in the number of *L. papilliferum* populations subjected to the negative effects of wildfire.

More specifically, an evaluation of *Lepidium papilliferum* EOs for which habitat information has been documented (79 of 80 EOs) demonstrates that most have experienced the effects of fire. Fifty-five of 79 EOs have been at least partially burned (14 of 16 EOs on the Boise Foothills, 30 of 42 EOs on the Snake River Plain and 11 of 21 EOs on the Owyhee Plateau), and 75 EOs have adjacent landscapes that have at least partially burned (16 of 16 EOs on the Boise Foothills, 39 of 42 EOs on the Snake River Plain, and 20 of 21 EOs on the Owyhee Plateau) (Cole 2009, Threats Table).

In the 2009 final listing rule, we presented a geospatial data analysis that evaluated the total *Lepidium papilliferum* EO area affected by wildfire over 50 years (from 1957 to 2007). This analysis found that the perimeter of previous wildfires had encompassed approximately 11,442 ac (4,509 ha) of the total *L. papilliferum* EO area rangewide (Stoner 2009, p. 48). However, in this analysis, areas that burned twice were counted twice. When we eliminate reoccurring fires and reanalyzed the data to account only for how much area burned at least once, we find that the perimeter of wildfires that had occurred over the same time period (1957–2007) encompassed approximately 7,475 ac (3,025 ha), or 47 percent of the total *L. papilliferum* EO area rangewide (Hardy 2013, *in litt.*). At the time of the 2009 final listing rule (74 FR 52014; October 8, 2009), the total area of known EOs was estimated to be approximately 16,000 ac (6,500 ha) (this area reflects only the immediate known locations of individuals of *L. papilliferum* as recognized in the IFWIS database, and does not represent the much larger geographic range of the species).

Since the 2009 listing, wildfires have continued to affect *Lepidium papilliferum* EOs and the surrounding habitat. Data collected over the past 5 years (from 2008 to 2012) indicates that there were 15 additional fires that burned approximately 1,190 ac (482 ha) of *L. papilliferum* EOs, with approximately 850 ac (340 ha) located in areas that had not previously burned (Hardy 2013, *in litt.*). Using new fire information since 2009, and considering only impacts to new, previously unburned areas, we updated the geospatial analysis and found that over the past 55 years (1957–2012) the perimeters of 126 wildfires occurring within the known range of *L. papilliferum* have burned approximately 8,324 ac (3,369 ha), or 53 percent of the total *L. papilliferum* EO area rangewide (Hardy 2013, *in litt.*).

We recognize that caution should be used in interpreting geospatial information as it represents relatively coarse vegetation information that may not reflect that some EOs may be located within remnant unburned islands of sagebrush habitat within fire perimeters. However, it is the best available information and provides additional cumulative evidence that increased wildfire frequency is ongoing and, as detailed in the 2009 final listing rule, is likely facilitating the continued spread of invasive plant species and Owyhee harvester ant colony expansion, all of which continue to negatively affect *Lepidium papilliferum* and its habitat.

In addition to the geospatial information, a review of the rangewide HIP transect data for evidence of fire history revealed that, of the 80 transects, 5 transects (6.25 percent) had partially burned (with approximately half of the area unburned), 13 (16.25 percent) were predominantly burned, and 18 (22.5 percent) had completely burned (Colket 2009, Table 5). Of the remaining 44 transects, 38 (48 percent) showed no effects from wildfire and 6 others (7.5 percent) were predominantly unburned.

Climate change models also project a likely increase in wildfire frequency within the semiarid Great Basin region

inhabited by *Lepidium papilliferum.* Arid regions such as the Great Basin where *L. papilliferum* occurs are likely to become hotter and drier; fire frequency is expected to accelerate, and fires may become larger and more severe (Brown *et al.* 2004, pp. 382–383; Neilson *et al.* 2005, p. 150; Chambers and Pellant 2008, p. 31; Karl *et al.* 2009, p. 83). Under projected future temperature conditions, the cover of sagebrush in the Great Basin region is anticipated to be dramatically reduced (Neilson *et al.* 2005, p. 154). Warmer temperatures and greater concentrations of atmospheric carbon dioxide create conditions favorable to *Bromus tectorum,* thus continuing the positive feedback cycle between the invasive annual grass and fire frequency that poses a threat that is having a significant effect on *L. papilliferum* (Chambers and Pellant 2008, p. 32; Karl *et al.* 2009, p. 83). Under current climate-change projections, we anticipate that future climatic conditions will favor further invasion by *B. tectorum,* that fire frequency will continue to increase, and the extent and severity of fires may increase as well. If current projections are realized, the consequences of climate change are, therefore, likely to exacerbate the existing primary threats to *L. papilliferum* of frequent wildfire and invasive nonnative plants, particularly *B. tectorum.* As the Intergovernmental Panel on Climate Change (IPCC) projects that the changes to the global climate system in the 21st century will likely be greater than those observed in the 20th century (IPCC 2007, p. 45), we anticipate that these effects will continue and likely increase in the future. See *Climate Change* under Factor E, in the 2009 final listing rule for a more detailed discussion of climate change.

To determine the rate at which wildfire is impacting *L. papilliferum* habitats and how far into the future we can reasonably predict the likely effects of wildfire on the species, we assessed the available data regarding the extent of *L. papilliferum* habitat that is likely to burn each year. As reported above, over the past 55 years (1957 to 2012), the perimeters of 126 wildfires occurring within the known range of *L. papilliferum* have burned approximately 8,324 ac (3,369 ha), or 53 percent of the total *L. papilliferum* EO area rangewide (Hardy 2013, *in litt.*). Thus the annual mean habitat impact due to wildfire over the past 55 years is estimated at 150 acres per year (ac/yr) (61 hectares per year (ha/yr)). As noted above, we have adjusted our analysis to avoid the potential ''double counting'' of areas that have burned more than once, and this rate is representative of the rate at which new (previously unburned) areas of *L. papilliferum* habitat are affected by wildfire. In the past 5 years alone (from 2008 to 2012), there were 15 fires that burned approximately 1,190 ac (482 ha) of *L. papilliferum* EOs, with approximately 850 ac (340 ha) located in areas that had not previously burned (Hardy 2013, *in litt.*). These data indicate that habitat impacts due to wildfire have averaged nearly 170 ac/yr (69 ha/yr) in the past 5 years.

At present, we estimate there are approximately 7,567 ac (3,064 ha) of *L. papilliferum* habitat remaining that have not yet been negatively impacted by fire. It is our best estimate that future rates of habitat impact will continue at the recently observed rate of between 150 ac/yr (61 ha/yr) and 170 ac/yr (69 ha/yr); we believe this is a conservative estimate, as it does not account for potentially greater rates of loss due to the likely effects of climate change and increasing coverage of *Bromus tectorum.* Based on the 55 years of accurate data regarding wildfire impacts accumulated so far, we can reasonably and reliably predict that this rate will continue into the future at least until the point when no unburned habitat for the species will likely remain, which is approximately 50 years (Figure 1; USFWS 2013, *in litt.*). Based on the observed rates of habitat impact due to wildfire, we can reliably predict that approximately 80 to 90 percent of the remaining *L. papilliferum* habitat not yet impacted by fire will be negatively affected by wildfire within roughly the next 36 to 47 years (Figure 1). Or, to look at it another way, within the next 36 to 47 years, only 10 to 20 percent of remaining *L. papilliferum* habitat will likely be unaffected by wildfire.

As discussed in more detail below in the *Summary of Factors Affecting the Species,* we conservatively conclude that, at this point, the species will be in danger of extinction. Thus, because we can reasonably predict that *L. papilliferum* is likely to become an endangered species in approximately 36 to 47 years, we consider that projection to occur within the foreseeable future, which is at least 50 years based on the rate at which the primary effect of wildfire is expected to act on the species. Because of the synergistic interaction between wildfire and the invasion of nonnative plant species, by association, we assume that future colonization of *L. papilliferum* habitat by invasive nonnatives will proceed on approximately the same timetable (discussed further below).

We recognize that our model (Figure 1; USFWS 2013, *in litt.*) is relatively simple, assuming, for example, that the impacts to habitat from wildfire will continue to occur at a constant rate over time, when in reality the extent of area affected by wildfire will vary from year to year. However, for our purposes of developing a reliable estimate of a timeframe within which *L. papilliferum* is likely to become endangered, we believe this projection makes reasonable use of the best scientific data available to predict the effects of wildfire on the species over time. As noted above, because of the close and synergistic association between the occurrence of wildfire and invasion by nonnative plants, followed by habitat loss and fragmentation, we believe this timeframe similarly applies to the primary threat of invasive nonnative plants and fragmentation and isolation as well.

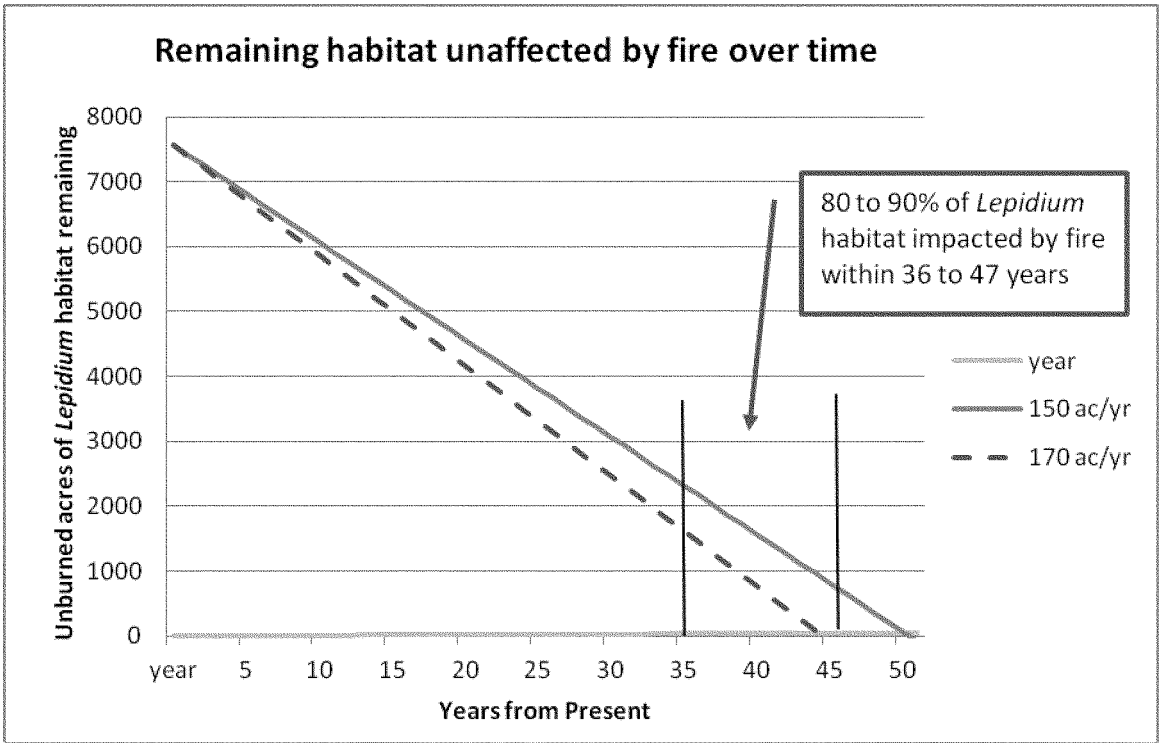


Figure 1. Rate of ongoing impacts due to wildfire in remaining *Lepidium papilliferum* habitat (USFWS 2013, in litt.).

In summary, wildfire effects have already impacted 53 percent of the total *Lepidium papilliferum* EO area rangewide. At the current rate of habitat impacted by wildfire, we anticipate that 80 to 90 percent of the remaining *L. papilliferum* habitat will be affected by wildfire within approximately the next 36 to 47 years. Because we can reliably predict that the threats of wildfire, and, by association, invasive, nonnative plant species, will cause the species to be in danger of extinction at this point, this time period of 36 to 47 years is within the foreseeable future.

*Invasive, Nonnative Plant Species*

The rate of conversion from native sagebrush-steppe to primarily nonnative annual grasslands continues to accelerate in the Snake River Plain of southwest Idaho (Whisenant 1990, p. 4), and is closely tied to the increased frequency and shortened intervals between wildfires. The continued spread of *Bromus tectorum* throughout the range of *Lepidium papilliferum,* coupled with the lack of effective methods to control or eradicate *B. tectorum,* leads us to conclude that the extent and frequency of wildfires will continue to increase indefinitely, given the demonstrated positive feedback cycle between these factors (Whisenant 1990, p. 4; Brooks and Pyke 2001, p. 5; D'Antonio and Vitousek 1992, pp. 73, 75; Brooks *et al.* 2004, p. 678). Under current climate change projections, we also anticipate that future climatic conditions will favor further invasion by *B. tectorum,* that fire frequency will likely increase, and the extent and severity of fires may increase as well (Brown *et al.* 2004, pp. 382–383; Neilson *et al.* 2005, p. 150; Chambers and Pellant 2008, pp. 31–32; Karl *et al.* 2009, p. 83, Bradley *et al.,* in press, p. 5). As summarized in our 2009 final listing rule, ''. . . if the invasion of *B. tectorum* continues at the rate witnessed over the last century, an area far in excess of the total range occupied by *L. papilliferum* could be converted to nonnative annual grasslands within the foreseeable future'' (74 FR 52032).

Invasive, nonnative plants have become established in *Lepidium papilliferum* habitats by spreading through natural dispersal (unseeded) or have been intentionally planted as part of revegetation projects (seeded). Invasive nonnative plants can alter multiple attributes of ecosystems, including geomorphology, wildfire regime, hydrology, microclimate, nutrient cycling, and productivity (Dukes and Mooney 2003, pp. 1–35). They can also negatively affect native plants through competitive exclusion, niche displacement, hybridization, and competition for pollinators; examples are widespread among native taxa and ecosystems (D'Antonio and Vitousek 1992, pp. 63–87; Olson 1999, p. 5; Mooney and Cleland 2001, p. 1).

Invasive nonnative plant species pose a serious and significant threat to *Lepidium papilliferum,* particularly when the synergistic effects of nonnative, annual grasses and wildfire are considered. Invasive, nonnative, unseeded species that pose threats to *L. papilliferum* include the annual grasses *Bromus tectorum* and *Taeniatherum caput-medusae* that are rapidly forming monocultures across the southwestern Idaho landscape. Evidence that *B. tectorum* is likely displacing *L. papilliferum* is provided by Sullivan and Nations' (2009, p. 135) statistical analyses of *L. papilliferum* abundance and nonnative invasive plant species cover within slickspots. Working with 5 years of HIP data collected from 2004 through 2008, Sullivan and Nations found that the presence of other plants in slickspots, particularly invasive exotics such as *Bassia prostrata* (forage kochia), a seeded nonnative plant species, and *Bromus tectorum,* was associated with the almost complete exclusion of *L. papilliferum* from those microsites (Sullivan and Nations 2009, pp. 111–112). According to their analysis, the presence of *B. tectorum* in

the surrounding plant community shows a consistently significant negative relationship with the abundance of *L. papilliferum* across all physiographic regions (Sullivan and Nations 2009, pp. 131, 137), and a significant negative relationship with *L. papilliferum* abundance within slickspots in the Snake River Plain and Boise Foothills regions (Sullivan and Nations 2009, p. 112).

Additionally, we have increasing evidence that nonnative plants are invading the slickspot microsite habitats of *Lepidium papilliferum* (Colket 2009, Table 4, pp. 37–49) and successfully outcompeting and displacing the species (Grime 1977, p. 1185; DeBolt 2002, *in litt;* Quinney 2005, *in litt;* Sullivan and Nations 2009, p. 109). Monitoring of HIP transects shows that *L. papilliferum*-occupied sites that were formerly dominated by native vegetation are showing relatively rapid increases in the cover of nonnative plant species (Colket 2008, pp. 1, 33). Regarding *Bromus tectorum* in particular, vast areas of the Great Basin are already dominated by this nonnative annual grass, and projections are that far greater areas are susceptible to future invasion by this species (Pellant 1996, p. 1). In addition, most climate change models project conditions conducive to the further spread of nonnative grasses such as *B. tectorum* in the Great Basin desert area occupied by *L. papilliferum* in the decades to come (see *Climate Change* under Factor E, below).

Geospatial analyses indicate that by 2008 approximately 20 percent of the total area of all *Lepidium papilliferum* EOs rangewide was dominated by introduced invasive annual and perennial plant species (Stoner 2009, p. 81). Because this analysis only considered areas that were 'dominated' by introduced invasive species, it does not provide a comprehensive estimate of invasive species presence within the range of *L. papilliferum.* For example, the 2008 HIP monitoring results revealed that all 80 HIP transects monitored within 54 EOs had some (Colket 2009, Table 4, pp. 37–49) nonnative, unseeded plant cover. The 2008 HIP monitoring results also revealed that, of the 80 HIP transects, 18 transects had some level of nonnative, seeded plant cover (Colket 2009, Table 4, pp. 37–49). In addition, monitoring of HIP transects rangewide indicated that nonnative plant cover is continuing to increase at a relatively rapid pace (Colket 2008, pp. 1, 3). For example, Colket (2008, pp. 1–3) reported increases in nonnative plant species cover of 5 percent or more over the span of 4 to 5 years in 28 percent of the HIP transects formerly dominated by native plant species. More recent data collected by the Idaho Department of Fish and Game (IDFG) since 2009 indicates that the number of transects with a percent or more increase in nonnative cover since establishment of the transect has significantly increased from 40 transects in 2009 to 61 transects in 2011 (IDFG 2012, pp. 12–13). In the 2012 report (p. 10), it was noted that ''many transects had far more than a 5% increase, and some were so heavily invaded that they were barely recognizable as slickspots.''

Bradley and Mustard (2006, p. 1146) found that the best indicator for predicting future invasions of *Bromus tectorum* was the proximity to current populations of the grass. Colket (2009, pp. 37–49) reports that 52 of 80 HIP transects (65 percent) had *B. tectorum* cover of 0.5 percent or greater within slickspots in at least 1 year between 2004 and 2008; nearly 95 percent of slickspots had some *B. tectorum* present. If current proximity to *B. tectorum* is an indicator of the likelihood of future invasion by that nonnative species, then *Lepidium papilliferum* is highly vulnerable to future invasion by *B. tectorum* throughout its range. If the invasion of *B. tectorum* continues at the rate witnessed over the last century, an area far in excess of the total range occupied by *L. papilliferum* could be converted to nonnative annual grasslands in the near future. First introduced around 1889 (Mack 1981, p. 152), *B. tectorum* cover in the Great Basin is now estimated at approximately 30,000 $mi^2$ (80,000 $km^2$) (Menakis *et al.* 2003, p. 284), translating into an historical invasion rate of approximately 300 $mi^2$ (700 $km^2$) a year over 120 years. In addition, climate change models for the Great Basin region also predict climatic conditions that will favor the growth and further spread of *B. tectorum* (See *Climate Change* under Factor E, in the 2009 final rule (74 FR 52014; October 8, 2009) for a more detailed discussion of climate change).

Given the observed negative association between the abundance of *Lepidium papilliferum* and invasive nonnative plants both within slickspot microsites and in the surrounding plant community, the demonstrated ability of some nonnative plants to displace *L. papilliferum* from slickspots, and the recognized contribution of nonnative plants such as *Bromus tectorum* to the increased fire frequency that additionally poses a primary threat to the species, we consider invasive nonnative plants to pose a threat that is having a significant effect on *L. papilliferum.* Currently, there are no feasible means of controlling the spread of *B. tectorum* or the subsequent increases in wildfire frequency and extent once *B. tectorum* is established on a large scale (Pellant 1996, pp. 13–14; Menakis *et al.* 2003, p. 287; Pyke 2007). The eradication of other invasive nonnative plants poses similar management challenges, and future land management decisions will determine the degree to which seeded nonnative plants may affect *L. papilliferum.*

In summary, data shows that all 80 HIP monitoring transects have some level of invasive nonnative plant species; that by 2008, 20 percent of the total area of all *Lepidium papilliferum* EOs rangewide was dominated by introduced invasive plant species; and nonnative plant cover is continuing to increase at a relatively rapid rate. Given the synergistic relationship between wildfire and the spread of invasive nonnative plant species, such as *Bromus tectorum,* combined with the fact that broadscale eradication methods for controlling these threats have not been developed, we anticipate that 80 to 90 percent of the remaining *Lepidium papilliferum* habitat will be affected by invasive nonnative plant species, to the point where they are outcompeting *L. papilliferum,* on a timeframe similar to that of increased wildfire effects. As with the primary threat of wildfire, because we can reliably predict that the associated primary threat of invasive, nonnative plant species will cause the species to be in danger of extinction in approximately 36 to 47 years, this time period is within the foreseeable future.

*Planned or Proposed Development*

Although the threat of development is relatively limited in geographic scope, the effect of development on *Lepidium papilliferum* can be severe, potentially resulting in the direct loss of individuals, and perhaps more importantly, the permanent loss of its unique slickspot microsite habitats. As described in the Background section of the 2009 final listing rule, *L. papilliferum* occurs primarily in specialized slickspot microsites. Slickspots and their unique edaphic and hydrological characteristics are products of the Pleistocene period, and they likely cannot be recreated on the landscape once lost. The potential, direct loss of slickspots to the effects from development, particularly those slickspots that are currently occupied by the species and provide the requisite conditions to support *L. papilliferum,* is therefore of great concern in terms of providing for the long-term viability of the species.

Development can also affect *Lepidium papilliferum* through indirect effects by contributing to increased habitat fragmentation, nonnative plant invasion, human-caused ignition of wildfires, and potential reductions in the population of insect pollinators. Development of sagebrush-steppe habitat is of particular concern in the Boise Foothills region, which, although relatively limited in its geographic extent, supports the highest abundance of *L. papilliferum* plants per HIP transect (Sullivan and Nations 2009, pp. 3, 103, 134). Past development has eliminated some historical *L. papilliferum* EOs (Colket *et al.* 2006, p. 4), and planned and proposed future developments threaten several occupied sites in the Snake River Plain and Boise Foothills regions (see below). Most of the recent development effects have occurred on the Snake River Plain and Boise Foothills regions, which collectively comprise approximately 83 percent of the extent of EOs; development has not been identified as an issue on the Owyhee Plateau (Stoner 2009, pp. 13–14, 19–20).

In the 2009 final listing rule (74 FR 52036), we were aware of 10 approved or proposed development projects planned for these regions (State of Idaho 2008, pp. 3–5), which would affect 13 out of 80 EOs (16 percent of EOs). However, many of these proposed developments and associated infrastructure projects are no longer being considered for implementation. Currently, we are aware of only three projects that could potentially affect *Lepidium papilliferum* and its habitat (Chaney, pers. comm. 2013a). The Spring Valley Planned Community (a.k.a., the M3 Development), is a 5,600-ac (2,300-ha) development that is scheduled for initiating construction in 2013 in the foothills north of Eagle. Construction is planned for five phases over a 20-year period. It is expected that the development and its associated infrastructure on adjacent Federal lands will result in some effects to the species and its habitat at three EOs (52, 76, and 108) (Hardy, pers. comm. 2013). The Dry Creek Ranch Development is a 1,400-ac (570-ha) development located north of Hidden Springs in Idaho. It is proposed to be built in five phases over a 10-year period (Chaney, pers. comm. 2013b). This development appears to overlap slightly with EO 38 (a D-ranked EO). Due to the low quality of the development map, the amount of overlap is uncertain, although it appears to be a very small area relative to the size of the EO polygon (Chaney, pers. comm. 2013c). This area is currently proposed as a designated natural area of the development; therefore, direct effects associated with construction of the development are expected to be minimal.

In addition, the Gateway West Transmission Line Project, which is scheduled to be constructed in phases from 2016 through 2021, would likely affect the species and its habitat, including proposed critical habitat, in southwestern Idaho. Although a final routing of the project has not yet been determined, the Gateway West Transmission Line Project could potentially affect 5 EOs within the project footprint and a total of 11 EOs within the Action Area (defined as the right-of-way footprint and the additional 0.5-mi (0.8-km) buffer (Tetra Tech 2013, p. 64)).

Though these developments and associated infrastructure projects have not yet been constructed, they define the foreseeable future with respect to development. Given the current information, based on approved or proposed project plans and proposed construction timelines, we anticipate that approximately 17 percent of known *Lepidium papilliferum* EOs will be affected by development within the next 20 years. This period of time represents the foreseeable future with respect to development, as this is the period of time over which we can reasonably predict development and associated infrastructure projects that will likely occur. The threat of development will have a negative effect on the species in combination with the primary threats of wildfire and invasive, nonnative plants. However, the effects of development are secondary to the effects on the species from the primary threats of an altered wildfire regime and invasive nonnative plants; thus, we do not anticipate that the threat of development alone will cause *L. papilliferum* to become an endangered species within this timeframe or significantly alter our prediction of when this species will become in danger of extinction.

*Habitat Fragmentation and Isolation of Small Populations*

*Lepidium papilliferum* occurs in naturally patchy microsite habitats, and the increasing degree of habitat fragmentation produced by wildfires and development threatens to isolate and fragment populations beyond the distance that its insect pollinators are capable of traveling. Genetic exchange in *L. papilliferum* is achieved through either seed dispersal or insect-mediated pollination (Robertson and Ulappa 2004, pp. 1705, 1708; Stillman *et al.* 2005, pp. 1, 6–8), and plants that receive pollen from more distant sources demonstrate greater reproductive success in terms of seed production (Robertson and Ulappa 2004, pp. 1705, 1708). *Lepidium papilliferum* habitats separated by distances greater than the effective range of available pollinating insects are at a genetic disadvantage, and may become vulnerable to the effects of loss of genetic diversity (Stillman *et al.* 2005, pp. 1, 6–8) and a reduction in seed production (Robertson *et al.* 2004, p. 1705). A genetic analysis of *L. papilliferum* suggested that populations in the Snake River Plain and the Owyhee Plateau may have reduced genetic diversity (Larson *et al.* 2006, p. 17; note the Boise Foothills were not analyzed separately in this study).

Many of the remaining occurrences of *Lepidium papilliferum,* particularly in the Snake River Plain and Boise Foothills regions, are restricted to small, remnant patches of suitable sagebrush-steppe habitat. When last surveyed, 31 EOs (37 percent) each had fewer than 50 plants (Colket *et al.* 2006, Tables 1 to 13). Many of these small remnant EOs exist within habitat that is degraded by the various threat factors previously described. Small *L. papilliferum* populations are likely persisting due to their long-lived seed bank, but the long-term risk of depletion of the seed banks for these small populations and the elimination of new genetic input make the persistence of these small populations uncertain. Providing suitable habitats and foraging habitats for the species' insect pollinators is important for maintaining *L. papilliferum* genetic diversity. Small populations are vulnerable to relatively minor environmental disturbances such as wildfire, herbicide drift, and nonnative plant invasions (Given 1994, pp. 66–67), and are subject to the loss of genetic diversity from genetic drift and inbreeding (Ellstrand and Elam 1993, pp. 217–237). Smaller populations generally have lower genetic diversity, and lower genetic diversity may in turn lead to even smaller populations by decreasing the species' ability to adapt, thereby increasing the probability of population extinction (Newman and Pilson 1997, p. 360).

Habitat fragmentation from the effects of development or wildfires has affected 62 of the 79 EOs for which habitat information is known (15 of 16 on the Boise Foothills, 35 of 42 on the Snake River Plain, and 12 of 21 on the Owyhee Plateau), and 78 EOs (all except one on the Owyhee Plateau) have fragmentation occurring within 1,600 ft (500 m) of the EOs (Cole 2009, Threats Table). Additionally, development projects are

planned within the occupied range of *Lepidium papilliferum* that would contribute to further large-scale fragmentation of its habitat, potentially resulting in decreased viability of populations through decreased seed production, reduced genetic diversity, and the increased inherent vulnerability of small populations to localized extirpation (See *Development,* above).

In summary, the increasing degree of fragmentation of *Lepidium papilliferum* and its habitat is primarily produced by wildfires, loss and conversion of surrounding sagebrush-steppe habitats, and the effects of development. We can reliably predict that habitat fragmentation effects will continue at a rate similar to wildfire and other threat effects, such that 80 to 90 percent of the remaining *L. papilliferum* habitat will be affected within roughly the next 36 to 47 years, which is, therefore, within the foreseeable future.

*Owyhee Harvester Ants*

In recent years, concern has emerged over the potential detrimental effects of seed predation on *Lepidium papilliferum* by the Owyhee harvester ant (Robertson and White 2009). Robertson and White reported that Owyhee harvester ants can remove up to 90 percent of *L. papilliferum* fruits and seeds, either directly from the plant or by scavenging seeds that drop to the ground (Robertson and White 2009, p. 9). A more recent study (Robertson and Crossman, 2012) corroborated the results from Robertson and White (2009), and goes further by showing that seed loss through predation by Owyhee harvester ants remains high (median = 92 percent), even when total seed output for individual plants is considered. For example, in one of their paired samples, they found 4,861 seeds beneath the control plant, but only 301 seeds beneath the plant exposed to ants. In another, they found 2,328 seeds beneath the control plant and 365 beneath the treatment plant. These results demonstrate that Owyhee harvester ants have the capacity to remove a large percentage of the seeds produced by *L. papilliferum,* even when seed output numbers in the thousands.

Data also suggests that the number of Owyhee harvester ant colonies is increasing in the range of *Lepidium papilliferum.* In 2010, researchers recorded 842 harvester ant colonies across 15 study sites. Results from 2012 demonstrate that only 2 years later, that number has increased to 947 colonies, which represents a 12.5 percent increase, resulting from the loss of 133 colonies and the addition of 239 (Robertson 2013, p. 4).

Although Owyhee harvester ants are a native species, they are increasingly colonizing areas occupied by *Lepidium papilliferum* in response to the ongoing degradation of native sagebrush systems. The expansion of Owyhee harvester ant colonies coincides with the replacement of sagebrush by grasses, and the increase in seed predation as a consequence of harvester ants expanding into areas adjacent to occupied slickspots has the potential to significantly affect *L. papilliferum* recruitment and the replenishment of the seed bank, which could affect the long-term viability of *L. papilliferum.*

Studies are currently underway to investigate Owyhee harvester ant colony dynamics within *Lepidium papilliferum* habitat. However, we currently lack enough data to develop a foreseeable future estimate for this threat at this time, although we expect the threat to continue to increase as the number of ant colonies continues to increase as a result of increased wildfire and the associated conversion of sagebrush to grasses.

*Consideration of Conservation Measures*

The threats to *Lepidium papilliferum* are ongoing and acting synergistically to negatively affect the species and its habitat, and are expected to continue into the foreseeable future. Although conservation measures to address some of these threat factors have been considered by the Service, as described in the 2009 final listing rule, effective controls to address the increased frequency of wildfire and eradicate the expansive infestation of nonnative plants throughout the range of *L. papilliferum* are not currently available, nor do we anticipate that controls will become available anytime soon that are likely to be effective on a scale sufficient to prevent the species from becoming in danger of extinction in the foreseeable future.

In addition to those conservation measures evaluated in the 2009 final listing rule, we considered a relatively new conservation measure. Rangeland Fire Protection Associations (RFPAs) are currently being established in some parts of southern Idaho, where important habitat for Greater sage-grouse (*Centrocercus urophasianus*) (''sage-grouse'') occurs. These RFPAs are designed to provide ranchers and landowners in rural areas with the necessary tools and training to allow them to assist with wildfire prevention and respond quickly to wildfire in areas containing sage-grouse habitat. One of these RFPAs, the Three Creek RFPA, has been established within the *Lepidium papilliferum* Owyhee Plateau physiographic region, where both *L. papilliferum* and sage-grouse co-occur. Benefits from first response to wildland fires that are realized to sage-grouse within this RFPA may also extend to *L. papilliferum* habitat in that area. Another RFPA, the Mountain Home RFPA, is located in the vicinity of *L. papilliferum* occupied habitat within the Snake River Plain physiographic region.

Idaho Code Section 38–104 was amended during the 2013 legislative session to clarify the requirements and process for the establishment of the RFPAs (State Board of Land Commissioners, 2013). Applicants that meet the requirements of an RFPA enter into a Master Agreement with the State, which provides them with the legal authority to detect, prevent, and suppress fires in the RFPA boundaries. RFPAs also require a Cooperative Fire Protection Agreement between the individual RFPA and the appropriate Federal agency, which provides the RFPAs the authority to take action on Federal land (Houston 2013, pers. comm.; Glazier 2013, pers. comm.). Although RFPAs have not yet demonstrated their ability to address the increased frequency of wildfire within the range of *L. papilliferum,* effective management of fire as a threat is often dependent on the timeliness of initial response efforts. Therefore, while RFPAs have not yet shown to be effective to offset the threats to the species to the point that it is not likely to become an endangered species within the foreseeable future, we view their formation as a positive conservation step for sagebrush-steppe habitat.

*Summary of Factors Affecting the Species*

The current status of *Lepidium papilliferum* reflects the past effects from the threats described above that have already affected or degraded more than 50 percent of the species' unique habitats, as well as the continued and ongoing vulnerability of the species' slickspot habitats to these same threats. Because we still do not see strong evidence of a steep negative population trend for the species (consistent with what we described in our 2009 final listing rule (74 FR 52051)), we believe that *L. papilliferum* is not in immediate danger of extinction. We do, however, conclude that *L. papilliferum* is likely to become in danger of extinction in the foreseeable future, based on our assessment of that period of time over which we can reasonably rely on predictions regarding the threats to the species. Our analysis has led us to conclude that future effects from the

synergistic and cumulative effects of increased wildfire, invasive nonnative plants, development, and other threat factors will affect the remaining *L. papilliferum* habitats at a level where the species would persist in only a small number of isolated EOs, with 80 to 90 percent of its remaining habitat impacted by these threats, and most likely with small populations and fragmented from other extant populations. At this point, we would consider the species to be in danger of extinction.

Given the wildfire history that has affected approximately 53 percent of the *L. papilliferum* habitat over the last 55 years (1957–2012), combined with the ongoing, expansive infestation of invasive plants across the species' range, and the fact that no broad-scale *Bromus tectorum* eradication methods or effective means for controlling the altered wildfire regime have been developed, these threats to *L. papilliferum* can reasonably be anticipated to continue for at least 50 years, and probably indefinitely. This information (in concert with the observed negative association between these ongoing and persistent threats and the species' distribution and abundance throughout its range, along with reasonable predictions about future conditions) leads us to the conclusion that at the current and anticipated rate of future habitat effects, *L. papilliferum* is likely to be in danger of extinction within the next 36 to 47 years, which is within the foreseeable future (the time period of at least 50 years, over which we can reliably predict the primary threat factors will continue to act upon the species). At this point, we believe 80 to 90 percent of its habitat will have been affected by the primary threats to the species, and *L. papilliferum* would likely persist only in a small number of isolated and fragmented populations.

**Determination**

Based on an assessment of the best scientific and commercial data available regarding the present and future threats to the species, we conclude that threatened status should be reinstated for *Lepidium papilliferum.* The plant is endemic to southwest Idaho and is limited in occurrence to an area that totals approximately 16,000 ac (6,500 ha). The species' unique slickspot habitats are finite and are continuing to degrade in quality due to a variety of threats. The species' limited area of occurrence makes it particularly vulnerable to the various threats affecting its specialized microsite habitats, and more than 50 percent of *L. papilliferum* EOs are already known to have been impacted from the effects of wildfire. The primary threats to the species are the effects of wildfire and invasive nonnative plants, especially *Bromus tectorum.* As stated in our 2009 final listing rule, we now have information indicating a statistically significant negative association between *L. papilliferum* abundance and wildfire, and between *L. papilliferum* abundance and cover of *B. tectorum* in the surrounding plant community. These negative associations are consistent throughout the range of the species. Wildfire continues to affect *L. papilliferum* habitat throughout the range at an annual rate higher than described in our 2009 final listing rule, and we expect this trend to continue and possibly further increase due to the projected effects of climate change. Furthermore, *B. tectorum* and other nonnative species continue to spread and degrade the sagebrush-steppe ecosystem where *L. papilliferum* persists, and we anticipate increased wildfire frequency and effects in those areas where nonnative plant species, especially *B. tectorum,* are dominant.

Similar to our findings in our 2009 final listing rule, although we do not see strong evidence of a steep negative population trend for the species, it should be noted that the total number of *Lepidium papilliferum* plants counted in HIP monitoring in 2011 and 2012 were the lowest since 2005, when complete counts for the species were initiated, with 16,462 plants in 2011 and 9,202 plants in 2012. Above-ground numbers of *L. papilliferum* individuals can fluctuate widely from one year to the next; however, because the primary threats of wildfire and nonnative invasive plants, especially *Bromus tectorum,* are currently affecting the species throughout its limited range, the recent 2011 and 2012 low population counts are of concern. All available information indicates that all the significant threats described in the 2009 final listing rule and this new analysis, including wildfire, nonnative invasive plants, development, and habitat fragmentation, will continue and likely increase into the foreseeable future. The projected future effects of climate change will further magnify the primary threats from wildfire and *B. tectorum,* and, by association with the resulting increase in grasses, the further expansion of Owyhee harvester ants. Although conservation measures to address some of these threat factors have been considered by the Service, effective controls to address the increased frequency of wildfire and eradicate the expansive infestation of nonnative plants throughout the range of the *L. papilliferum* are not currently available and are not likely to be available within the foreseeable future.

As found in our 2009 final listing rule (74 FR 52052), we anticipate the continuation or increase of all of the significant threats to *Lepidium papilliferum* into the foreseeable future, even after accounting for ongoing and planned conservation efforts, and we find that the best available scientific data indicate that the negative consequences of these threats on the species will likewise continue or increase. Population declines and habitat degradation will likely continue in the foreseeable future to the point at which *L. papilliferum* will become in danger of extinction.

Section 3 of the Act defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Because we have not yet observed the extirpation of local *Lepidium papilliferum* populations or steep declines in trends of abundance, we do not believe the species is presently in danger of extinction, or meets the definition of an endangered species. However, as noted earlier, we do anticipate that *L. papilliferum* will become in danger of extinction when it reaches the point that its habitat has been so diminished that the species persists only in a small number of isolated EOs, with small populations that are fragmented from other extant populations. We conservatively estimate this point will be reached in approximately 36 to 47 years, when 80 to 90 percent of its remaining habitat will have been affected based on the ongoing range of rates of *L. papilliferum* habitat impacted by fire, and the close association between fire and invasion by *Bromus tectorum* and other nonnative invasive plants. We can, therefore, reasonably assume that, without the unanticipated development of future effective conservation measures, the magnitude of the threats affecting *L. papilliferum* and its habitats will become progressively more severe, and that those threats, acting synergistically, are likely to result in the species becoming in danger of extinction within the next 36 to 47 years, which is within the foreseeable future as we have defined it here for the species. Therefore, we conclude that, under the Act, threatened status should be reinstated for *L. papilliferum* throughout all of its range,

and we seek public input on this determination. If, following consideration of public comments, we decide to list *L. papilliferum* under the Act, we will also pursue designating critical habitat for this species. For information and the opportunity to comment on that proposed rulemaking process, see our related document published elsewhere in today's **Federal Register**.

## References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* . In addition, a complete list of all references cited herein, as well as others, is available upon request from the Idaho Fish and Wildlife Office, Boise, Idaho (see **ADDRESSES**).

## Authors

The primary authors of this document are the staff members of the Idaho Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES**).

## Authority

The authority for this action is the Endangered Species Act of 1977, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 14, 2014.

*Stephen D. Guertin,*

*Deputy Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2014–03133 Filed 2–11–14; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register

Vol. 79, No. 29

Wednesday, February 12, 2014

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

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

February 6, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received by March 14, 2014. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

#### Rural Housing Service

*Title:* Community Facilities Grant Program—7 CFR 3570–B

*OMB Control Number:* 0575–0173

*Summary of Collection:* The Rural Housing Service is authorized by Section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926), as amended, to make grants to public agencies, nonprofit corporations, and Indian tribes to develop essential community facilities and services for public use in rural areas. These facilities include schools, libraries, childcare, hospitals, clinics, assisted-living facilities, fire and rescuer stations, police stations, community centers, public buildings, and transportation. The Department of Agriculture through its Community Programs strives to ensure that facilities are available to all rural communities.

*Need and Use of the Information:* Rural Development field offices will collect information from applicant/borrowers and consultants. This information is used to determine eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan and grant funds for authorized purposes. Failure to collect the information could result in improper determinations of eligibility, improper use of funds, and/or unsound loans.

*Description of Respondents:* Not-for-profit institutions.

*Number of Respondents:* 893.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 6,982.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2014–02993 Filed 2–11–14; 8:45 am]

BILLING CODE 3410–XV–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Information Collection; Interagency Generic Clearance for Federal Land Management Agencies Collaborative Visitor Feedback Surveys on Recreation and Transportation Related Programs and Systems

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on a new generic information collection, Federal Land Management Agencies Collaborative Visitor Feedback Surveys on Recreation and Transportation Related Programs and Systems.

#### Participating Agencies

The following Federal land management agencies are included:

- *Department of Agriculture:* Forest Service, lead agency;
- *Department of the Interior:* National Park Service, Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, and U.S. Geological Survey;
- *Department of Defense:* U.S. Army Corps of Engineers; and
- *Department of Transportation:* Federal Highway Administration and Volpe National Transportations Systems Center.

**DATES:** Comments must be received in writing on or before April 14, 2014 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Comments concerning this notice should be addressed to Margaret Petrella, The Volpe Center (RVT–21), 55 Broadway Street, Cambridge, MA 02142. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Comments also may be submitted via facsimile to (617) 494–3522 or by email to: *Margaret.Petrella@dot.gov.*

The public may inspect comments received at 55 Broadway Street, Cambridge, MA 02142 in Room 3–67 during normal business hours. Visitors are encouraged to call ahead to 617–

494–3582 to facilitate entry to the building.

**FOR FURTHER INFORMATION CONTACT:** Margaret Petrella, Social Scientist U.S. Department of Transportation, The Volpe Center (617) 494–3582.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, twenty-four hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Interagency Generic Clearance for Federal Land Management Agencies Collaborative Visitor Feedback Surveys on Recreation and Transportation Related Programs and Systems

*OMB Number:* 0596–NEW.

*Expiration Date of Approval:* Not Applicable.

*Type of Request:* New.

*Abstract:* From time to time, individual or combined units or subunits of various Federal Land Management Agencies (FLMAs) and/or FLMA Research Station units need to acquire direct visitor and authorized user feedback about site- or area-specific services, facilities, road and/or travel systems, needs, programs, demographics, management of FLMA lands, and/or other quantitative information on FLMA lands in cross-jurisdictional landscapes. FLMAs include, but are not limited to: USDA-Forest Service; National Park Service; Bureau of Land Management; US Fish & Wildlife Service; US Geological Survey; US Army Corps of Engineers; Bureau of Reclamation; and Department of Transportation. This direct feedback is vital to establish and/or revise goals and objectives for FLMA recreation-related transportation system programs to and within FLMA recreation sites/opportunities, to inform land management plans, and to facilitate interagency coordination across multijurisdictional landscapes, which will better meet the needs of the public and the resources under FLMA management.

The benefits of an FLMA interagency generic Information Collections Request (ICR) program would include significant public and agency time and cost savings. If multiple FLMAs in an area or landscape work jointly on one quantitative visitor feedback information collection under a generic clearance from OMB, there would be significant savings in government time and costs related to survey development and OMB survey approval, as well as savings in the costs of survey administration and data processing. In particular, the public burden would be diminished as the public would only need to respond to one jointly-sponsored survey, instead of to multiple similar surveys at multiple units in an area.

Under the following authorities, the participating FLMAs are obligated to actively solicit public input to improve public lands management to better serve the public:

1. Forest Service Administration Organic Act of 1897 [16 U.S.C. 473–478, 479–482, and 551] as amended by the Transfer Act of 1905 [16 U.S.C. 472, 524, 554];
2. Multiple Use Sustained Yield Act of 1960 [Pub. L. 86–15, § 3];
3. Forest and Rangeland Renewable Resources and Planning Act of 1974 [Pub.L. 93–378 sec. 3(2,3)] as amended;
4. National Forest Management Act of 1976 [Pub. L. 94–588, secs. 2(3), 6(d)], as amended;
5. Government Performance and Results Act of 1993 [Pub. L. 103–62] as amended;
6. Executive Order 12862 of September 11, 1993;
7. Executive Order 13571 of April 27, 2011.
8. Executive Act 12996 of March 25, 1996
9. National Park Services Act of 1916
10. National Wildlife Refuge System Administration Act
11. National Wildlife Refuge System Centennial Act [Pub. L. 106–408]
12. The Federal Land Policy and Management Act (FLPMA) of 1976
13. General Survey Act of 1824
14. National Environmental Policy Act of 1969

Survey respondents would include visitors and potential visitors to FLMA units or subunits, and residents of communities near FLMA units. Since many of the FLMA surveys are similar in terms of the populations being surveyed, the types of questions being asked, the research methodologies being used, and the database structures and data being utilized, the FLMAs propose a generic Interagency Information Collections clearance from OMB to obtain quantitative and/or qualitative visitor/user feedback utilizing collection mechanisms such as surveys, focus groups, and/or interviews.

Information collection could occur at one location, several locations, across FLMA units, across regions, across the nation, and could be multi-jurisdictional at any of these levels. Information collection activities could occur once, could occur as iterative collections over a limited period of time, or could occur over long periods of time at some periodic, planned time interval. Direct visitor feedback could be collected through facilitated focus groups or through individual interviews (qualitative or quantitative), with either electronically-recorded or hand-written responses, via mail, internet, or social media electronic surveys, including QL codes on Smartphones. Interview information could be collected at pertinent site(s) or access point(s) as visitors arrive or complete their visit or are in the midst of their activities; and could be collected pre- or post-visit.

In general, questions will relate to visitor experience at one or more specific locations or locales (one FLMA's lands or multi-jurisdictional) and could address one or more of the following key categories, identified as goal areas in FLMA planning documents:

- *Mobility and access* (for example, different modes used to access sites; satisfaction with transportation related services and facilities; use and satisfaction with traveler information)
- *System management* (for example, support for different management policies)
- *Safety* (safety concerns prior or during trip, safety-related incidents that occurred)
- *Environment* (visitor priorities with respect to natural and cultural resources; perceptions related to sound)
- *Economic development* (amount visitors spend within the area)
- *Visitor/user demographics* (for example, home city and state, age group, gender, race, number of people/vehicles in party);
- *Trip characteristics* (for example, length of trip, trip purpose, activities and destinations)

To ensure anonymity, personally-identifiable information (PII) will not be stored with contact information at any time, and contact information will be purged from researcher files once data collections are complete should any PII be collected.

Participation in surveys will be strictly voluntary. The information could be collected by FLMA personnel, private contractors, other government agency partners, or universities or other educational institutions conducting the information collection on behalf of the FLMAs. The data collected would provide managers with reliable information to better serve the public by better-informing strategic planning, resource allocation, the modification or refinement of various program management goals and objectives or management plan revisions, and future planning efforts focused on developing more effective and efficient delivery of

program services, whether on one or several unit(s) or at an interagency, cross-jurisdictional scope. FLMAs may also receive requests for this kind of information from the general public and/or a variety of organizations including Congressional staffs, newspapers, magazines, and transportation and/or recreational trade organizations.

Primary analysis of the information could be conducted by FLMA staff, by one or more research station(s), by private contractors, other government agency partners, or universities or other educational institutions doing the analyses on behalf of the FLMA. All results will be aggregated so specific responses cannot be correlated to specific respondents.

The information collected, including approved survey instruments, final reports, and data will be archived in a shared database that can be accessed by all FLMAs. In this way, FLMAs will be kept informed about the survey efforts of their partner agencies and can use the results to inform the development of their own surveys, thus reducing the duplication of effort and public burden. In addition, analyzed data could be shared among other agencies, stakeholders, educational institutions, interested parties, or the public through written or electronic reports. FLMA units will use this information to inform strategic planning, resource allocation, program management goals and objectives revisions, Land Management Plan revisions, and long-range planning with statistically-reliable, visitor input data necessary to help FLMA units provide their customers with better service and coordinate more effectively across jurisdictions.

FLMAs have not previously conducted joint, integrated direct feedback information collections across units, areas, states, regions, or landscapes. As a result, FLMAs have not been able to implement coordinated, multi-agency recreation transportation system planning, or coordinated facility and service planning and design. Without these joint, coordinated information collections, the FLMAs will continue to lack the information necessary to identify and implement feasible and publicly-accepted transportation and other facility and service improvements to help protect public land resources and enhance visitor experience. These joint information collections will become ever more important as FLMA budgets continue to shrink and demand for access to FLMA recreation sites and opportunities continue to grow. These information collections will directly impact FLMA resources and visitor experience quality, and help the FLMAs meet their various resource, recreation, and transportation management mandates.

*Estimate of Annual Burden:* Under a generic ICR program, the number of respondents will differ for each individual survey, depending on the purpose and design of each information collection. Therefore, the number of respondents is necessarily an estimate. The number of responses can be estimated as approximately 70% of the number of respondents approached, based on previous administrations of similar surveys in various FLMA units. Respondents will be asked to respond only one time. Overall, we assume 1800 respondents per survey effort, 10 respondents per focus group effort and 500 comment cards per comment card effort. The burden of time to respond one time will vary, depending on the methodology employed. Surveys are estimated at approximately 20 minutes per person, based on previous administrations of similar surveys in various FLMA units, while comment cards are estimated at 3 minutes per person, and focus groups are estimated at 90 minutes per person.

*Type of Respondents:* Visitors, potential visitors, or residents of lands managed by one FLMA or by multiple FLMAs in cross-jurisdictional landscapes (for example, Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service, National Park Service).

*Estimated Annual Number of Respondents:* 72,000.

*Estimated Annual Number of Responses per Respondent:* One.

*Estimated Burden per Response:* 25 minutes.

*Estimated Total Annual Burden on Respondents:* 30,000 hours.

*Comment is invited:* Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the FLMAs, including whether the information will have practical or scientific utility; (2) the accuracy of the FLMAs' estimate of the burden of the collection of information, including the validity of the assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: February 4, 2014.

**James M. Pena,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 2014–02980 Filed 2–11–14; 8:45 am]

BILLING CODE 3411–15–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Nez Perce-Clearwater NF's, Salmon River Ranger District, Idaho; Hungry Ridge Restoration Project

**AGENCY:** Forest Service, USDA.

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

**SUMMARY:** The proposed action would use a combination of timber harvest, precommercial thinning, prescribed fire and reforestation to achieve the desired range of age-classes, size classes, vegetative species distributions, habitat complexity and landscape patterns across the forested portions of the project area. Road decommissioning, culvert replacements, improvement of trail crossings and road improvements are proposed to improve watershed health. The DEIS will include two Forest Plan amendments. The first amendment would adopt the Regional soils standards for the Hungry Ridge project, while the second amendment would allow mechanical treatment within Forest Plan Old Growth (Management Area 20) and reallocate some existing MA20 to stands better suited to Old Forest attributes. The EIS will analyze the effects of the proposed action and alternatives. The Nez Perce-Clearwater NF's, invites comments and suggestions on the issues to be addressed. The agency gives notice of the National Environmental Policy Act (NEPA) analysis and decision making process on the proposal, so interested and affected members of the public may participate and contribute to the final decision.

**DATES:** Comments concerning the scope of the analysis must be received by March 31, 2014. The draft environmental impact statement is expected in July 2014 and the final environmental impact statement is expected in December 2014.

**ADDRESSES:** Send written comments to *Barry Ruklic, Interdisciplinary Team*

*Leader; Grangeville Office, 104 Airport Road; Grangeville, ID 83530.* Comments may also be sent via email to *comments-northern-nezperce-salmon-river@fs.fed.us,* or via facsimile to FAX 208–983–4099. Include your name, address, organization represented (if any), and the name of the project for which you are submitting comments. Electronic comments will be accepted in MS Word, Word Perfect, PDF or Rich Text formats. Comments received in response to this solicitation, including names and addresses of those who comment, will be a part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

**FOR FURTHER INFORMATION CONTACT:** Barry Ruklic, Interdisciplinary Team Leader, (208) 983–4026.

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

**SUPPLEMENTARY INFORMATION:** The objective of the Hungry Ridge Restoration project is to manage forest vegetation to restore natural disturbance patterns; improve long-term resilience at the stand and landscape level(s); reduce the potential risk to private property and structures; improve watershed conditions; and maintain/improve habitat structure, function and diversity.

## Purpose and Need for Action

*Need:* Historically, wildland fire was the dominant influence in defining the project area landscape and the native species that adapted and persisted within this dynamic environment. The advent of effective fire suppression effectively removed wildland fire's effects from the Hungry Ridge landscape and ecological system. This has had a profound effect on the vegetation, wildlife and the ecological integrity of the area including a vegetative shift to more fire intolerant species.

Suppression of wildland fire and increasing levels of insect and disease mortality in the Hungry Ridge landscape are causing an increase in fuel loadings, including higher quantities, greater continuity and distribution. This situation has increased the risk of large, stand replacing wildfire that could adversely impact vegetation, fisheries resources, watershed function, wildlife habitat(s) and private land/homes.

Complexity has increased due to the numerous private lands and structures as well as major ingress/egress routes. The private lands (two major parcels) are split between over 20 different landowners, with the potential for more subdividing in the future. The private land and structures (over 20 structures) are situated on the main ridgeline running through the project area. Approximately 80% of the planning area is recognized as Wildland-Urban interface (WUI).

Past management practices have also altered the vegetation and ecosystem processes and provided an extensive transportation system within the project area. Road construction has impacted wildlife security, making elk, moose, fisher, pine marten, lynx and wolves more vulnerable to hunting and trapping mortality. Additionally, the wide-spread availability and use of off-road vehicles has resulted in a reduction in wildlife security.

Some landscape elements, notably on drier sites, such as vegetative patch size, stand structure, and species composition are currently outside the desired range of variability for the area, including a diminishing proportion of fire-climax stands comprised of species such as ponderosa pine and western larch.

While forest succession in the area has favored some wildlife species (ie pileated woodpecker), it has reduced habitat quality for species favoring open understories (ie goshawk, pygmy nuthatch and flammulated owl), decreased forage availability and quality for ungulates and decreased habitats that support black-backed woodpeckers (burned areas).

Native grassland communities have also been impacted by fire exclusion and past management practices. Annual grasses and noxious weeds have established on open, low-elevation, drier slopes, as well as along roads and trails throughout the area. Winter range herbaceous forage and browse plants have declined or become decadent and invasive weeds and grasses have reduced the quality and quantity of available forage.

*Purpose:* Restore a more diverse and resilient forest structure, with a range of age classes, size classes, habitat complexity (diversity) and disturbance patterns that more closely emulate the results of natural disturbance. This would reduce the intensity of subsequent wildland fire events and increase the opportunities for fire management strategy and tactics to be successful, while providing for firefighter and public safety.

Watershed and fisheries resources will be improved, including Deer Creek prescription watershed, through specific actions and indirect vegetation restoration opportunities. Wildlife habitat will be improved for ungulates and increased for species favoring open understories (ie goshawk, pygmy nuthatch and flammulated owl).

Timber harvest and prescribed burning is proposed to help achieve some resource management objectives as well as provide a source of wood products for local industry and a source of jobs for local residents.

## Proposed Action

The Nez Perce-Clearwater National Forests, Salmon River Ranger District is proposing Commercial harvest on 10,600 acres throughout the Hungry Ridge landscape. Intermediate harvest (6,352 acres proposed) methods including variable density selection, commercial thinning, understory removal, sanitation, or pre-commercial thinning may be utilized to thin canopy fuels and create conditions unfavorable for crown fire persistence and initiation. These treatments will favor fire tolerant seral species, such as ponderosa pine and western larch.

Regeneration harvest methods (4,234 acres proposed) including seedtree, shelterwood and clearcutting with reserves, will be utilized to manipulate patch size, age-class distribution, and species composition. These treatments will emphasize regeneration of seral species and reduce the spread of insect and disease.

Both temporary and specified permanent road construction (approximately 24 miles total) associated with harvest operations is needed to economically treat target stands.

Prescribed fire is proposed on 12,372 acres throughout the Hungry Ridge landscape.

Prescribed fire will be utilized to treat natural fuel and residual fuel accumulations left from harvest operations. Prescribed fire would create a favorable seed-bed for regeneration of fire climax species, and create plantable sites in open patches. Fire will also encourage grass, forbe and shrub growth.

Prescribed fire will be utilized to treat natural fuel accumulations, including thinning of trees. This prescription will be utilized, primarily where harvest cannot be used and/or is not economically feasible. Maintenance burns would occur on regularly scheduled intervals to maintain stand structure, minimize fuel accumulations and encourage big-game browse.

Road decommissioning is proposed to minimize further impacts to watershed, fisheries and soil resources. Road

decommissioning will range from abandonment, removing culverts or total recontouring of road prism. Twenty miles of decommissioning opportunities have been identified and will be analyzed as part of the proposal.

Watershed/Fisheries improvement projects vary from culvert replacements, RHCA planting to constructing exclosures. Culvert replacement (12 identified) is proposed to create aquatic organism passage and/or help facilitate 100 year flows and reduce sedimentation into the stream channel. The majority of culvert replacement opportunities are in the tributaries of Mill Creek (southern portion of analysis area).

Recreation/trail improvements are proposed to decrease impacts to fisheries resources and improve usability. Trail conversion; stream crossing treatments (Buck meadows area) and access improvements (American Creek drainage) are a few of the opportunities identified.

Wildlife—Restoration of forest structure and reintroduction of fire on the landscape will create winter range for Elk and Deer, as well as, provide improved habitat for many wildlife species, including Flammulated Owl and white-headed woodpeckers.

Weed Treatments are proposed to continue treatment of known populations within the analysis area, as well as, minimizing the spread of existing and potential weed populations.

**Possible Alternatives**

The Forest Service will consider a no-action alternative, which will serve as a baseline for comparison of alternatives. The proposed action will be considered along with additional alternatives that will be developed to meet the purpose and need for action, and to address significant issues identified during scoping.

**Responsible Official**

Rick Brazell, Nez Perce-Clearwater Forest Supervisor, Nez Perce-Clearwater National Forests Supervisor's Office, 903 3rd St., Kamiah, ID 83536.

**Nature of Decision To Be Made**

The deciding official will adopt the proposed action, in whole or in part, or another alternative; and what mitigation measures and management requirements will be implemented.

**Preliminary Issues**

Reallocation of some MA20 (Forest Plan Old Growth) from existing locations, to other stands within the project area. Field reconnaissance has determined inconsistencies with MA20 allocations and what is actually present within the stands. Alternative locations for MA20, better suited to Old forest structure and definition have been identified.

Mechanical treatment is proposed within existing MA20 (Forest Plan Old Growth) stands. Treatments are designed to result in a less fire, insect and disease-prone stand(s), that will persist into the future. Large trees will be left on the landscape.

Road construction is proposed to economically achieve desired conditions within the project area.

A Forest Plan amendment for soils is proposed to move some forested stands to desired future condition and fulfill the purpose and need of the project and improve soil conditions.

Restoration activities will occur in the Deer Creek prescription watershed, to improve water quality values.

**Scoping Process**

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The scoping process identifies issues to be analyzed in detail and leads to the development of alternatives to the proposal. The Forest Service is seeking information and comments from other Federal, State and local agencies; Tribal Governments; and organizations and individuals who may be interested in or affected by the proposed action. Comments received in response to this notice, including the names and addresses of those who comment, will be a part of the project record and available for public review.

*Early Notice of Importance of Public Participation in Subsequent Environmental Review:* A Draft Environmental Impact Statement (DEIS) will be prepared for comment. The next major opportunity for public input will be when the DEIS is published. The comment period for the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Draft EIS is anticipated to be available for public review in July of 2014.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Dated: February 4, 2014.

**Rick Brazell,**

*Forest Supervisor.*

[FR Doc. 2014–03032 Filed 2–11–14; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Reporting of Sea Turtle Entanglement in Fishing Gear or Marine Debris

**AGENCY:** National Oceanic and Atmospheric Administration, 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 April 14, 2014.

**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 Kate Sampson, (978) 282–8470 or *kate.sampson@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This request is for extension of a currently approved collection.

Sea turtles can become accidentally entangled in active or discarded fishing gear, marine debris, or other lines in the marine environment. These entanglements may prevent the recovery of endangered and threatened sea turtle populations. NOAA's Marine Fisheries Service (NMFS) established the Sea Turtle Disentanglement Network in response to the threat of entanglement, in particular in the vertical line of fixed gear fisheries. The Network's goals are to increase reporting and to reduce sea turtle serious injury and mortality associated with these events. As there is limited to no observer coverage of pot gear fisheries, NMFS relies on the

Network, the United States Coast Guard, the fishing industry, Federal, state, and local authorities, and the public for this information, which helps NMFS understand the threats to sea turtle populations in the Northeast Region (Maine to Virginia).

**II. Method of Collection**

Reports will be submitted on paper (faxed or mailed), by telephone, or, most frequently, electronically.

**III. Data**

*OMB Control Number:* 0648–0496.

*Form Number:* None.

*Type of Review:* Regular submission (extension of a currently approved collection).

*Affected Public:* Business or other for-profit organizations, individuals or households, not-for-profit institutions, Federal government, and state, local or tribal government.

*Estimated Number of Respondents:* 88.

*Estimated Time Per Response:* Two hours to two hours and 30 minutes per case (75 cases).

*Estimated Total Annual Burden Hours:* 164.

*Estimated Total Annual Cost to Public:* $450 (recordkeeping/reporting).

**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: February 6, 2014.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2014–03011 Filed 2–11–14; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–12–2014]**

### Foreign-Trade Zone 57—Charlotte, North Carolina; Application for Reorganization/Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Charlotte Regional Partnership, Inc., grantee of FTZ 57, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on February 7, 2014.

FTZ 57 was approved by the Board on April 28, 1980 (Board Order 156, 45 FR 30466, 5/8/80) and expanded on September 23, 1982 (Board Order 199, 47 FR 43103, 9/30/82), on July 29, 2002 (Board Order 1240, 67 FR 51535, 8/8/02), on February 9, 2005 (Board Order 1369, 70 FR 9613, 2/28/05), and on August 5, 2009 (Board Order 1641, 74 FR 41374, 8/17/09). On April 24, 2009, the grant of authority was reissued to the Charlotte Regional Partnership, Inc. (Board Order 1613, 74 FR 21622–21623, 5/8/09).

The current zone includes the following sites: *Site 1* (2.3 acres)—distribution facility, 11425 Granite Street, Charlotte; *Site 1a* (23.186 acres)—distribution facility, 1411 & 1701 Continental Blvd., Charlotte; *Site 2* (3.15 acres)—distribution facility, 14620 Carowinds Blvd., Charlotte; *Site 3* (26 acres)—International Airport Center, 3401 International Blvd., Charlotte; *Site 7* (2 parcels, 619 acres)—Parcel 1 (576 acres)—Hickory Regional Airport, Clement Blvd., Hickory; and, Parcel 2 (43 acres)—distribution facility, 543 12th Street Drive NW., Hickory; and, *Site 16* (351 acres, sunset 8/31/2014)—Monroe Corporate Center, Airport Road & Goldmine Road, Monroe. (**Note:** Sites 4, 5, 6, 8, 9, 10, 11, 12, 13, 14 and 15 have expired.)

The grantee's proposed service area under the ASF would include the Counties of Alexander, Anson, Caldwell, Cabarrus, Catawba, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Polk, Rowan, Rutherford, Stanly and Union, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Charlotte Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize and expand its existing zone under the ASF as follows: (1) Combine existing Sites 1 and 1a to become Site 1 and expand the site to include an additional 2.769 acres (new site total—28.255 acres); (2) Remove existing Site 2 and Site 3 due to changed circumstances; and, (3) Modify Site 7 by removing Parcel 1 (576 acres) (new site total—43 acres). Site 16 would become a magnet site and modified Sites 1 and 7 would become usage-driven sites. The applicant is also requesting a new magnet site: Proposed Site 17 (3,900 acres) at the Charlotte Douglas International Airport, 5501 Josh Birmingham Parkway, Charlotte. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 17 be so exempted. The application would have no impact on FTZ 57's previously authorized subzones.

In accordance with the FTZ Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is April 14, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 28, 2014.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: February 7, 2014.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2014–03067 Filed 2–11–14; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–10–2014]**

### Proposed Foreign-Trade Zone—Cortland County, New York Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by Cortland County, New York to establish a foreign-trade zone in Cortland County, adjacent to the Syracuse CBP port of entry, under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new ''subzones'' or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone project. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on February 6, 2014. The applicant is authorized to make the proposal under Chapter 190, Laws of New York, Section 224, 23–a.

The proposed zone would be the fourth zone adjacent to the Syracuse CBP port of entry. The existing zones are as follows: FTZ 90, Onondaga County (Grantee: County of Onondaga, Board Order 230, 11/4/1983); FTZ 172, Oneida County (Grantee: County of Oneida, Board Order 502, 1/8/1991); and, FTZ 285, Chenango County (Grantee: Chenango County, Board Order 1886, 3/25/2013).

The applicant's proposed service area under the ASF would be Cortland County. If approved, the applicant would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to the Syracuse Customs and Border Protection port of entry. No sites or subzones are being requested at this time.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is April 14, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 28, 2014.

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

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: February 5, 2014.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2014–03073 Filed 2–11–14; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[S–71–2013]**

### Approval of Subzone Status; Janssen Ortho LLC; Gurabo, Puerto Rico

On May 17, 2013, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Puerto Rico Trade & Export Company, grantee of FTZ 61, requesting subzone status subject to the existing activation limit of FTZ 61 on behalf of Janssen Ortho LLC in Gurabo, Puerto Rico.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (78 FR 30862, 5–23–2013). 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 Sec. 400.36(f)), the application to establish Subzone 61N is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13 and further subject to FTZ 61's 1,821.07-acre activation limit.

Dated: February 6, 2014.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2014–03068 Filed 2–11–14; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–942]**

### Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2012

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

**SUMMARY:** The Department of Commerce (the Department) is rescinding the administrative review of the countervailing duty (CVD) order on certain kitchen appliance shelving and racks (KASR) from the People's Republic of China (PRC) for the period January 1, 2012, through December 31, 2012.

**DATES:** *Effective Date:* February 12, 2014.

**FOR FURTHER INFORMATION CONTACT:** Joshua Morris or Nancy Decker, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1779 or (202) 482–0196, respectively.

#### Background

The Department initiated an administrative review of the CVD order on KASR from the PRC with respect to Jiangsu Weixi Group Co. (Weixi) covering the period January 1, 2012, through December 31, 2012, based on a request by Electrolux North America, Inc., Electrolux Home Products, Inc., and Electrolux Major Appliances (collectively, ''Electrolux'').[1] On December 4, 2013, Electrolux withdrew its request for an administrative review of Weixi. No other party requested a review.

#### Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 67104, 67108 (November 8, 2013).

days of the publication of the notice of initiation of the requested review. In this case, Electrolux withdrew its request within the 90-day deadline, and no other parties requested an administrative review of the CVD order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding the administrative review of KASR from the PRC covering the period January 1, 2012, through December 31, 2012.

**Assessment**

The Department will instruct U.S. Customs and Border Protection (CBP) to assess CVDs on all entries of KASR from the PRC during the period of review at rates equal to the cash deposit of estimated CVDs required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

**Notifications**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of CVDs prior to liquidation of the relevant entries during this review period.

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

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: February 6, 2014.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2014–03066 Filed 2–11–14; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–912]**

### Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review

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

**SUMMARY:** On December 27, 2013, the Department of Commerce (''the Department'') published its *Preliminary Results* of a changed circumstances review (''CCR'') of the antidumping duty order on certain new pneumatic off-the road (''OTR'') tires from the People's Republic of China (''PRC'').[1] The Department preliminarily determined that Zhongce Rubber Group Company Limited (''Zhongce'') is the successor-in-interest to Hangzhou Zhongce Rubber Co., Ltd. (''Hangzhou'') and invited parties to comment on the *Preliminary Results.* As no parties submitted subsequent comment, the Department is making no changes to the *Preliminary Results.*

**DATES:** *Effective Date:* February 12, 2014.

**FOR FURTHER INFORMATION CONTACT:** Andrew Medley, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–4987.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 4, 2008, the Department published in the **Federal Register** an antidumping duty order on OTR tires from the PRC.[2] In the third administrative review of the *Order,* Hangzhou received its own calculated rate of 112.41 percent.[3]

On November 5, 2013, Zhongce requested that the Department conduct a changed circumstances review of the *Order* to confirm that Zhongce is the successor-in-interest to Hangzhou.[4] In its submission, Zhongce explained that the only change was to the name of the company, and provided evidence supporting its claim.[5]

On December 27, 2013, we made a preliminary finding that Zhongce is the successor-in-interest to Hangzhou and thus, should receive the same antidumping duty treatment with respect to OTR tires from the PRC as the former Hangzhou.[6] We also stated that interested parties had 30 days in which to request a hearing and submit case briefs.[7] No party submitted case briefs. Thus, consistent with 19 CFR 351.216(e), we are issuing this final determination within 45 days of our preliminary finding.

**Scope of the Order**

The merchandise covered by this *Order* includes new pneumatic tires designed for off-the-road and off-highway use, subject to certain exceptions.[8] The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.

**Final Results of Changed Circumstances Review**

Because no parties 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 Zhongce is the successor-in-interest to Hangzhou for the purpose of determining antidumping duty liability.

[1] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 78 FR 78814 (December 27, 2013) (''*Preliminary Results*'').

[2] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 73 FR 51624 (September 4, 2008) (''*Order*'').

[3] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part; 2010–2011,* 78 FR 22513 (April 16, 2013).

[4] *See* Letter from Zhongce to the Department titled ''New Pneumatic Off-The-Road Tires From the PRC: Request for Hangzhou Zhongce Rubber Co., Ltd. for Changed Circumstances Review'' (November 5, 2013).

[5] *Id.* at 2–3 and Attachments 1, 2, and 3.

[6] *See Preliminary Results,* 78 FR at 78815.

[7] *Id.*

[8] For a complete description of the scope of the *Order, see Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review; 2011–2012,* 78 FR 33341 (June 4, 2013), and accompanying Issues and Decision Memorandum at ''Scope.''

**Instructions to U.S. Customs and Border Protection**

The Department will instruct U.S. Customs and Border Protection to suspend liquidation and collect a cash deposit rate of 112.41 percent on all shipments of the subject merchandise exported by Zhongce and entered, or withdrawn from warehouse, for consumption, on or after the publication date of these results of changed circumstances review.[9]

**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 these final results and notice in accordance with sections 751(b) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216 and 351.221(c)(3).

Dated: February 6, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2014–03069 Filed 2–11–14; 8:45 am]

**BILLING CODE 3510–DS–P**

[9] *See, e.g., Stainless Steel Plate in Coils From Belgium: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 77 FR 21963 (April 12, 2012); *see also Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From Thailand,* 75 FR 74684, 74685 (December 1, 2010).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–875]**

### Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China: Continuation of Antidumping Duty Order

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

**SUMMARY:** As a result of the determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (the ''ITC'') that revocation of the antidumping duty order on non-malleable cast iron pipe fittings from the People's Republic of China (''PRC'') would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of this antidumping duty order.

**DATES:** *Effective Date:* February 12, 2014.

**FOR FURTHER INFORMATION:** Jamie Blair-Walker, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–2615.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 1, 2013, the Department published the notice of initiation of the second sunset review of the antidumping duty order on non-malleable cast iron pipe fittings from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the ''Act'').[1] As a result of its review, the Department determined that revocation of the antidumping duty order on non-malleable cast iron pipe fittings from the PRC would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail should the order be revoked.[2] On February 5, 2014, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on non-malleable cast iron pipe fittings from the PRC would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

**Scope of the Order**

The products covered by the order are finished and unfinished non-malleable cast iron pipe fittings with an inside diameter ranging from 1/4 inch to 6 inches, whether threaded or unthreaded, regardless of industry or proprietary specifications. The subject fittings include elbows, ells, tees, crosses, and reducers as well as flanged fittings. These pipe fittings are also known as ''cast iron pipe fittings'' or ''gray iron pipe fittings.'' These cast iron pipe fittings are normally produced to ASTM A–126 and ASME B.16.4 specifications and are threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories (UL) certified. The scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings.

Fittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above or which have the same physical characteristics and are produced to ASME B.16.3, ASME B.16.4, or ASTM A–395 specifications, threaded to ASME B1.20.1 specifications and UL certified, regardless of metallurgical differences between gray and ductile iron, are also included in the scope of the order. These ductile fittings do not include grooved fittings or grooved couplings. Ductile cast iron fittings with mechanical joint ends (MJ), or push on ends (PO), or flanged ends and produced to the American Water Works Association (''AWWA'') specifications AWWA C110 or AWWA C153 are not included. Additionally, certain brake fluid tube connectors are excluded from the scope of this order.[4]

Imports of subject merchandise are currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7307.11.00.30, 7307.11.00.60, 7307.19.30.60, 7307.19.30.85, 7326.90.8588. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.[5]

[1] *See Initiation of Five-Year (''Sunset'') Review,* 78 FR 39256 (July 1, 2013).

[2] *See Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order,* 78 FR 72639 (December 3, 2013).

[3] *See Non-Malleable Cast Iron Pipe Fittings From China,* 79 FR 6923 (February 5, 2014).

[4] To be excluded, the connector must meet the following description: The connector is a ''joint block'' for brake fluid tubes and is made of non-malleable cast iron to Society of Automotive Engineers (SAE) automotive standard J431. The tubes have an inside diameter of 3.44 millimeters (0.1355 inches) and the inside diameters of the fluid flow channels of the connector are 3.2 millimeters (0.1260 inches) and 3.8 millimeters (0.1496 inches). The end of the tube is forced by pressure over the end of a flared opening in the connector also known as ''flared joint.'' The flared joint, once made fast, permits brake fluid to flow through channels that never exceed 3.8 millimeters (0.1496 inches) in diameter.

[5] On April 21, 2009, in consultation with U.S. Customs and Border Protection, the Department added the following HTSUS classification to the anti-dumping duty module for non-malleable cast iron pipe fittings: 7326.90.8588. *See* Memorandum from Abdelali Elouaradia, Office Director, Import Administration, Office 4 to Stephen Claeys, Deputy Assistant Secretary, Import Administration regarding the Final Scope Ruling on Black Cast Iron Cast, Green Ductile Flange and Twin Tee, antidumping duty order on non-malleable iron cast pipe fittings from China, dated September 19, 2008. *See also* Memorandum to the file from Karine Gziryan, Financial Analyst, Office 4, regarding Module Update adding Harmonized Tariff Schedule Number for twin tin fitting included in the scope of antidumping order on non-malleable iron cast pipe fittings from China, dated April 22, 2009.

### Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping order on non-malleable cast iron pipe fittings from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year sunset review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: February 6, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2014–03071 Filed 2–11–14; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–925; A–428–841]**

### Sodium Nitrite From Germany and the People's Republic of China: Continuation of Antidumping Duty Orders

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

**SUMMARY:** As a result of the determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (the ''ITC'') that revocation of the antidumping duty orders on sodium nitrite from Germany and the People's Republic of China (''PRC'') would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of these antidumping duty orders.

**DATES:** *Effective Date:* February 12, 2014.

**FOR FURTHER INFORMATION CONTACT:** Lori Apodaca or Howard Smith, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–4551 or 202–482–5193, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 1, 2013, the Department published the notice of initiation of the first sunset reviews of the antidumping duty orders on sodium nitrite from Germany and the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the ''Act'').[1] As a result of its reviews, the Department determined that revocation of the antidumping duty orders on sodium nitrite from Germany and the PRC would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail should the orders be revoked.[2] On February 4, 2014, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on sodium nitrite from Germany and the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

### Scope of the Order

The merchandise subject to these orders is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by these orders may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO2 and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name ''sodium nitrite'' to sodium nitrite. The CAS registry number is 7632–00–0.

While the HTSUS subheading, CAS registry number, and CAS name are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

[1] *See Initiation of Five-Year (''Sunset'') Review,* 78 FR 39256 (July 1, 2013).

[2] *See Sodium Nitrite from Germany and the People's Republic of China: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders,* 78 FR 69368 (November 19, 2013).

[3] *See Sodium Nitrite from China and Germany,* 79 FR 6628 (February 4, 2014).

### Continuation of the Orders

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty orders would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping orders on sodium nitrite from Germany and the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year sunset review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: February 6, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2014–03065 Filed 2–11–14; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Comprehensive Regional Decision-Support Framework To Prioritize Sites for Coral Reef Conservation in the U.S. Virgin Islands: Survey of Professional SCUBA Divers

**AGENCY:** National Oceanic and Atmospheric Administration, 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 April 14, 2014.

**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 Theresa L. Goedeke, 301–713–3028 or *Theresa.Goedeke@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

This request is for a new data collection to benefit marine resource managers in the U.S. Virgin Islands (USVI). The National Ocean Service (NOS) proposes to collect data on the resource usage patterns, knowledge and values of the professional SCUBA diving community relative to coral reefs in the USVI. Data are needed to support conservation and management goals as defined under the Coral Reef Conservation Act (CRCA) (16 U.S.C. 6401 et seq). The purpose of the CRCA is to advance conservation of coral reef ecosystems in the U.S. and Territories. Specifically, the Act requires the federal government to produce sound scientific information on the condition of coral reef ecosystems and threats to them, so that reefs may be better preserved, sustained and restored. The present data collection is one component of a larger project to produce a science-based decision support tool that will be used by resource managers to prioritize coral reefs in the USVI for the purposes of management under the CRCA.

Researchers propose to collect information from the professional SCUBA diving community in the USVI, who are an important stakeholder group with much knowledge about this marine ecosystem. Information will be gathered from this community because of their experience diving on focal coral reefs and reliance on such ecosystems for their livelihood. The survey will ascertain which coral reef areas are needed/used most by persons in the professional SCUBA diving community. It will gather divers' opinions on the status and health of these coral reefs. Finally, the survey will collect information on the demographic characteristics of professional SCUBA diving community, along with the values they have for local coral reefs.

Data gathered will be used to identify, rank and describe key characteristics of the coral reefs that are most important to the professional SCUBA diving community in the USVI, as well as their perception of reef status and resilience. The survey data will become one of several layers of information combined in a larger effort to objectively map the important reefs in the USVI. Knowledge of the locations of priority reefs, together with an assessment of the threats to those reefs, will provide information to prioritize management actions.

## II. Method of Collection

The data collection will take place over a four month period and will be comprised of a questionnaire as well as a mapping exercise to be completed by the respondent. The data will be collected electronically using an online survey instrument and associated mapping tool.

## III. Data

*OMB Control Number:* None.

*Form Number:* None.

*Type of Review:* Regular submission (request for a new information collection).

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 250.

*Estimated Time per Response:* 25 minutes.

*Estimated Total Annual Burden Hours:* 104.

*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: February 6, 2014.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2014–03010 Filed 2–11–14; 8:45 am]

BILLING CODE 3510–JE–P

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# DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## Patent and Trademark Financial Transactions

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), 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 the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before April 14, 2014.

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

- *Email: InformationCollection@uspto.gov*. Include ''0651–0043 comment'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Matthew Lee, Office of Finance, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–6343; or by email to *Matthew.Lee@uspto.gov.* Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

Under 35 U.S.C. 41 and 15 U.S.C. 1113, the United States Patent and Trademark Office (USPTO) charges fees for processing and other services related to patents, trademarks, and information products. Customers may submit payments to the USPTO by several methods, including credit card, deposit account, electronic funds transfer (EFT), and paper check transactions. The provisions of 35 U.S.C. 41 and 15 U.S.C.

1113 are implemented in 37 CFR 1.16–1.28, 2.6–2.7, and 2.206–2.209.

This information collection includes the Credit Card Payment Form (PTO–2038), which provides the public with a convenient way to submit a credit card payment for fees related to a patent, trademark, or information product. Customers may also submit credit card payments via the Electronic Credit Card Payment Form (PTO–2231) when using online systems through the USPTO Web site for paying fees related to patents, trademarks, or information products.

The USPTO will not include credit card information submitted using the provided credit card payment forms among the patent or trademark records open to public inspection.

Customers may establish a deposit account for making fee payments by completing a Deposit Account Application Form (PTO–2232) and sending the required information, initial deposit, and service fee to the USPTO. Deposit accounts eliminate the need to submit a check, credit card information, or other form of payment for each transaction with the USPTO. Additionally, in the event that a fee amount due is miscalculated, customers may authorize the USPTO to charge any remaining balance to the deposit account and therefore avoid the potential consequences of underpayment. As customers use their deposit accounts to make payments, they may deposit funds to replenish their accounts by mailing a check to the USPTO, sending funds via wire transfer, or making a deposit online via EFT using the Electronic Deposit Account Replenishment Form (PTO–2233) available at the USPTO Web site. Replenishments may not be made by credit card. Customers may close their deposit accounts by submitting a written request or by using the Deposit Account Closure Request Form (PTO–2234). The USPTO is also adding the Deposit Account Withdrawal Request to this collection to allow customers to remove funds from their deposit accounts without closing the entire account.

In addition to credit cards and deposit accounts, customers may also use EFT to make online fee payments to the USPTO. Customers must first establish a user profile with their banking information by submitting the EFT User Profile Form (PTO–2236) through the USPTO Web site. Once their profile is created, customers may use their User ID and password to perform EFT transactions.

Under 37 CFR 1.26 and 2.209, the USPTO may refund fees paid by mistake or in excess of the required amount. In general, refunds of amounts larger than $25 are returned to the customer automatically using the same method as the original payment. For refund amounts of $25 or less, customers must submit a written request to the Refund Branch of the USPTO Office of Finance.

The USPTO is currently developing a new MyFinancials system that will allow customers to add, manage, and report on payment methods in their online user profiles at the USPTO Web site. After establishing a USPTO username and password, customers may add their credit card, deposit account, and EFT information to their profile using the MyFinancials web interface. Customers may then manage and report on these stored payment methods online. In the future, the USPTO will deploy additional functionality that will allow the stored payment methods to be used when the customer conducts transactions with the USPTO.

Once the MyFinancials system is deployed, the information that customers currently submit using the Deposit Account Application Form (PTO–2232) and the EFT User Profile Form (PTO–2236) will be integrated into the MyFinancials interface, eliminating the need for these separate forms and thereby streamlining the process of setting up those payment methods. When those separate forms are no longer necessary, the USPTO will remove them from this collection.

## II. Method of Collection

By mail, facsimile, hand delivery, or electronically to the USPTO.

## III. Data

*OMB Number:* 0651–0043.

*Form Number(s):* PTO–2038, PTO–2231, PTO–2232, PTO–2233, PTO–2234, PTO–2236.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals or households; businesses or other for-profits; and not-for-profit institutions.

*Estimated Number of Respondents:* 2,590,950 responses per year. The USPTO estimates that approximately 21% of these responses will be from small entities.

*Estimated Time per Response:* The USPTO estimates that it will take the public approximately one to seven minutes (0.02 to 0.12 hours) to gather the necessary information, prepare the appropriate form or document, and submit the items in this collection to the USPTO.

*Estimated Total Annual Respondent Burden Hours:* 77,925 hours.

*Estimated Total Annual Respondent Cost Burden:* $4,130,025. The USPTO expects that 75% of the submissions for this information collection will be prepared by fee administrators/coordinators and that 25% of the submissions will be prepared by paraprofessionals. Using those proportions and the estimated rates of $30 per hour for fee administrators/coordinators and $122 per hour for paraprofessionals, the USPTO estimates that the average rate for all respondents will be approximately $53 per hour. Therefore, the USPTO estimates that the respondent cost burden for submitting the information in this collection will be approximately $4,130,025 per year.

| Item | Estimated time for response (minutes) | Estimated annual responses | Estimated annual burden hours |
|---|---|---|---|
| Credit Card Payment Form (PTO–2038) | 2 | 103,115 | 3,093 |
| Electronic Credit Card Payment Form (PTO–2231) | 2 | 2,412,213 | 72,366 |
| Deposit Account Application Form (PTO–2232) | 2 | 284 | 9 |
| Deposit Account Replenishment | 2 | 29,210 | 876 |
| Electronic Deposit Account Replenishment Form (PTO–2233) | 1 | 34,339 | 687 |
| Deposit Account Closure Request Form (PTO–2234) | 1 | 162 | 3 |
| Deposit Account Withdrawal Request | 1 | 33 | 1 |
| EFT User Profile Form (PTO–2236) | 3 | 1,320 | 66 |
| Refund Request | 4 | 8,181 | 573 |
| MyFinancials Stored Payment Methods | 7 | 2,093 | 251 |
| Totals | | 2,590,950 | 77,925 |

*Estimated Total Annual Non-hour Respondent Cost Burden:* $130,138. There are no capital start-up, maintenance, or recordkeeping costs associated with this information collection. However, this collection does have annual (non-hour) cost burden in the form of service fees associated with deposit accounts and returned payments as well as postage costs.

There are service fees for setting up a deposit account at the USPTO, for not maintaining the minimum balance required for the deposit account, and for returned payments. The service charge to establish a deposit account is $10, and the USPTO estimates that it processes 284 Deposit Account Application Forms annually, for a total of $2,840 per year. There is also a $25 service charge for deposit accounts that are below the minimum balance ($1,000 minimum balance for an unrestricted deposit account or $300 minimum balance for a restricted deposit account) at the end of the month. The USPTO estimates that it assesses 4,000 of these low balance charges annually, for a total of $100,000 per year. There is a $50 service charge for processing a payment refused (including a check returned ''unpaid'') or charged back by a financial institution. The USPTO estimates that it assesses 129 of these returned payment charges annually, for a total of $6,450 per year. The total estimated service fees for this collection are $109,290 per year.

Customers may incur postage costs when submitting the Credit Card Payment Form and other paper forms or requests to the USPTO by mail. Customers generally send the Credit Card Payment Form to the USPTO along with other documents related to the fee or service being paid for by credit card, but some customers may submit just the Credit Card Payment Form without additional supporting documents. The USPTO estimates that roughly 5 percent of the 103,115 paper Credit Card Payment Forms submitted annually may be mailed in by themselves, or approximately 5,156 per year. The USPTO estimates that it will receive an additional 37,391 submissions per year that may be mailed, including Deposit Account Replenishments and Refund Requests, for a total of 42,547 mailed submissions per year. The USPTO estimates that the first-class postage cost for a mailed submission will be 49 cents, for a total postage cost of approximately $20,848 per year.

The total annual (non-hour) respondent cost burden for this collection in the form of service fees and postage costs is estimated to be approximately $130,138 per year.

## IV. Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

The USPTO is soliciting public comments to: (a) 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; (b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: February 7, 2014.

**Susan K. Fawcett,**

*Records Officer, USPTO, Office of the Chief Information Officer.*

[FR Doc. 2014–03070 Filed 2–11–14; 8:45 am]

BILLING CODE 3510–16–P

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# COMMODITY FUTURES TRADING COMMISSION

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

**DATES:** Comments must be submitted on or before March 14, 2014.

**ADDRESSES:** Comments may be submitted to OMB within 30 days of the notice's publication. Comments, identified by ''Practice by Former Members and Employees of the Commission Pursuant to 17 CFR 140.735.6,'' should be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503.

Comments may be also be submitted, regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, identified by ''Practice by Former Members and Employees of the Commission Pursuant to 17 CFR 140.735.6,'' by any of the following methods:

- Agency Web site, via its Comments Online process: *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- Mail: Send to Melissa D. Jurgens, Secretary, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.
- Hand Delivery/Courier: Same as Mail, above.
- Federal eRulemaking Portal: *http://www.regulations.gov/search/index.jsp.* Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in section 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** John P. Dolan at (202) 418–5220; FAX: (202) 418–5524; email: *jdolan@cftc.gov,* and refer to OMB Control No. 3038–0025. This contact can also provide a copy of the ICR.

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1 (2010). Commission regulations are accessible on the Commission's Web site, *www.cftc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Practice by Former Members and Employees of the Commission (OMB Control No. 3038–0025). This is a request for extension of a currently approved information collection.

*Abstract:* Commission Rule 140.735–6 governs the practice before the Commission of former members and employees of the Commission and is intended to ensure that the Commission is aware of any existing conflict of interest. The rule generally requires former members and employees who are employed or retained to represent any person before the Commission within two years of the termination of their CFTC employment, to file a brief written statement with the Commission's Office of General Counsel. The proposed rule was promulgated pursuant to the Commission's rulemaking authority contained in section 8a(5) of the Commodity Exchange Act, 7 U.S.C. 12a(5) (1994), as amended.

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 the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on December 11, 2013 (78 FR 75333).

*Burden statement:* The respondent burden for this collection is estimated to average .10 hours per response to file the brief written statement. This estimate include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* 3.

*Estimated number of responses:* 4.5.

*Estimated total annual burden on respondents:* .10 hours.

*Frequency of collection:* On occasion.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: February 7, 2014.

**Christopher J. Kirkpatrick,**

*Deputy Secretary of the Commission.*

[FR Doc. 2014–03048 Filed 2–11–14; 8:45 am]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

**[Docket No. DARS–2014–0014]**

### Negotiation of a Reciprocal Defense Procurement Memorandum of Understanding With the Republic of Slovenia

**AGENCY:** Department of Defense.

**ACTION:** Request for public comments.

**SUMMARY:** On behalf of the U.S. Government, DoD is contemplating negotiating and concluding a Reciprocal Defense Procurement (RDP) Memorandum of Understanding (MOU) with the Republic of Slovenia (hereafter ''Slovenia''). DoD is requesting industry feedback regarding its experience in public defense procurements conducted by or on behalf of the Slovenian Ministry of Defense or Armed Forces.

**DATES:** Submit written comments to the address shown below on or before March 14, 2014.

**ADDRESSES:** Submit comments to Defense Procurement and Acquisition Policy, Attn: Mr. Victor Deal, 3060 Defense Pentagon, Room 5E621, Washington, DC 20301–3060; or by email to *Victor.T.Deal3.civ@mail.mil.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Victor Deal, Senior Analyst, Office of the Under Secretary of Defense for Acquisition, Technology and Logistics (OUSD(AT&L)), Defense Procurement and Acquisition Policy, Contract Policy and International Contracting; Room 5E621, 3060 Defense Pentagon, Washington, DC 20301–3060; telephone (703) 697–9351.

**SUPPLEMENTARY INFORMATION:** The RDP MOUs that DoD has with 23 ''qualifying'' countries are concluded at the level of the Secretary of Defense and his counterpart. The purpose of RDP MOUs is to promote rationalization, standardization, and interoperability of conventional defense equipment with allies and other friendly governments. These MOUs provide a framework for ongoing communication regarding market access and procurement matters that enhance effective defense cooperation.

RDP MOUs generally include language by which the Parties agree that their defense procurements will be conducted in accordance with certain implementing procedures. These procedures relate to—

- Publication of notices of proposed purchases;
- The content and availability of solicitations for proposed purchases;
- Notification to each unsuccessful offeror;
- Feedback, upon request, to unsuccessful offerors concerning the reasons they were not allowed to participate in a procurement or were not awarded a contract; and
- Providing for the hearing and review of complaints arising in connection with any phase of the procurement process to ensure that, to the extent possible, complaints are equitably and expeditiously resolved.

Based on the MOU, each country affords the other country certain benefits on a reciprocal basis consistent with national laws and regulations. The benefits that the United States accords to the products of qualifying countries include—

- Offers of qualifying country end products are evaluated without applying the price differentials otherwise required by the Buy American statute and the Balance of Payments Program;
- The chemical warfare protection clothing restrictions in 10 U.S.C. 2533a and the specialty metals restriction in 10 U.S.C. 2533b(a)(1) do not apply to products manufactured in a qualifying country; and
- Customs, taxes, and duties are waived for qualifying country end products and components.

If DoD (for the U.S. Government) concludes an RDP MOU with the Republic of Slovenia, then Slovenia would be listed as one of the ''qualifying countries'' in the definition of ''qualifying country'' at DFARS 225.003, and offers of products of Slovenia or that contain components from Slovenia would be afforded the benefits available to all qualifying countries. This also means that U.S. products would be exempt from any analogous ''Buy Slovenia'' and ''Buy European Union'' laws or policies applicable to procurements by the Slovenian Ministry of Defense or Armed Forces.

While DoD is evaluating Slovenia's laws and regulations in this area, DoD would benefit from U.S. industry's experience in participating in Slovenia's public defense procurements. DoD is, therefore, asking U.S. firms that have participated or attempted to participate in procurements by or on behalf of Slovenia's Ministry of Defense or Armed Forces to let us know if the procurements were conducted with transparency, integrity, fairness, and due process in accordance with published procedures, and if not, the nature of the problems encountered.

DoD is also interested in comments relating to the degree of reciprocity that exists between the United States and Slovenia when it comes to the openness

of defense procurements to offers of products from the other country.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2014–03036 Filed 2–11–14; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2014–ICCD–0014]**

### Agency Information Collection Activities; Comment Request; State of Preschool Survey 2013–2015

**AGENCY:** Institute of Education Sciences/ National Center for Education Statistics (IES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before April 14, 2014.

**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-2014–ICCD–0014 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, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** For questions related to collection activities or burden, please call Katrina Ingalls, 703–620–3655 or electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here. We will ONLY accept comments in this mailbox when the regulations.gov site is not available to the public for any reason.

**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:* State of Preschool Survey 2013–2015.

*OMB Control Number:* 1850–0895.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* State, Local, or Tribal Governments.

*Total Estimated Number of Annual Responses:* 53.

*Total Estimated Number of Annual Burden Hours:* 636.

*Abstract:* The National Center for Education Statistics (NCES), within the Institute of Education Sciences (IES) of the U.S. Department of Education (ED), is seeking approval to conduct in 2014, 2015, and 2016 the annual, web-based State of Preschool survey, which centralizes data about publicly provided early childhood education opportunities. Data are collected from state agencies responsible for providing early childhood education and made available for secondary analyses. Data collected as part of the survey focus on enrollment counts in state-funded early childhood education programs, funding provided by the states for these programs, and program monitoring and licensing policies. The collected data are then reported, both separately and in combination with extant data available from federal agencies supporting early childhood education programs such as Head Start and the U.S. Census Bureau. Data from the U.S. Census Bureau form the basis for some of the rates developed for the State of Preschool reports. The data and annual report resulting from the State of Preschool data collection provide a key information resource for research and for federal and state policy on publicly funded early childhood education.

**Kate Mullan,**

*Acting Director,*

Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–03030 Filed 2–11–14; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2014–ICCD–0015]**

### Agency Information Collection Activities; Comment Request; Annual Student Activities Report

**AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before April 14, 2014.

**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–2014–ICCD–0015 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, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** For questions related to collection activities or burden, please call Kate Mullan, 202–401–0563 or electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here. We will ONLY accept comments in this mailbox when the regulations.gov site is not available to the public for any reason.

**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:* Annual Student Activities Report.

*OMB Control Number:* 1840–0781.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* Individuals or households.

*Total Estimated Number of Annual Responses:* 100.

*Total Estimated Number of Annual Burden Hours:* 300.

*Abstract:* Section 703 of the Higher Education Act of 1965, as amended, authorizes the Secretary to award fellowships under the Jacob K. Javits Fellowship Program for graduate study in the arts, humanities, and social sciences. The fellowships support graduate students of superior ability selected on the basis of demonstrated achievement, exceptional promise and financial need. This information collection provides the U.S. Department of Education with information needed to determine if fellows have made substantial progress toward meeting the program's objectives and allows program staff to monitor and evaluate time-to-degree completion and the graduation rate of Javits fellows. Congress has mandated, through the Government Performance Results Act of 1993, that the U.S. Department of Education provide documentation regarding the progress being made by the program.

Dated: February 7, 2014.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2014–03022 Filed 2–11–14; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Biomass Research and Development Technical Advisory Committee

**AGENCY:** Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation.

**DATES AND TIMES:** February 27, 2014, 8:30 a.m.–5:30 p.m. February 28, 2014, 8:30 a.m.–12:45 p.m.

**ADDRESSES:** Marriott Wardman Park, 2660 Woodley Rd. NW., Washington, DC 20008.

**FOR FURTHER INFORMATION CONTACT:** Elliott Levine, Designated Federal Officer, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; (202) 586–1476; Email: E*lliott.Levine@ee.doe.gov* and Roy Tiley at (410) 997–7778 ext. 220; Email: *rtiley@bcs-hq.com.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of Meeting:* To provide advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

*Tentative Agenda:* Agenda will include the following:

- Update on USDA Biomass R&D Activities
- Update on DOE Biomass R&D Activities
- Update on the Biomass Research and Development Initiative
- Update on the DOE Bioenergy Technologies Office upcoming Funding Opportunity Announcements
- Update of the Renewable Fuel Standard and volumetric requirement for biofuels
- Overview of the Bioeconomy Initiative

*Public Participation:* Members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you must contact Elliott Levine at 202–586–1476; Email: *Elliott.Levine@ee.doe.gov* and Roy Tiley at (410) 997–7778 ext. 220; Email: *rtiley@bcs-hq.com* at least 5 business days prior to the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Co-chairs of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Co-chairs will conduct the meeting to facilitate the orderly conduct of business.

*Minutes:* The minutes of the meeting will be available for public review and copying at *http://biomassboard.gov/committee/meetings.html.*

Issued at Washington, DC on February 6, 2014.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2014–03052 Filed 2–11–14; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Basic Energy Sciences Advisory Committee

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, February 27, 2014 8:30 a.m.–5:00 p.m., and Friday, February 28, 2014, 9:00 a.m.–12:00 noon.

**ADDRESSES:** Hilton Washington, DC/Rockville Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Katie Perine; Office of Basic Energy Sciences; U.S. Department of Energy; Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585; Telephone: (301) 903–6529.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* The purpose of this meeting is to provide advice and

guidance with respect to the basic energy sciences research program.

*Tentative Agenda:* Agenda will include discussions of the following:

- News from Office of Science/DOE
- News from the Office of Basic Energy Sciences
- Joint Center for Artificial Photosynthesis Science Discovery Update
- LCLS–II
- APS Upgrade
- New BESAC Charge
- NSLS–II, NSLS Science transition
- Upcoming COV for the Chemical Sciences, Geosciences and Biosciences Division
- SNS/HFIR Update

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Katie Perine at 301–903–6594 (fax) or *katie.perine@science.doe.gov* (email). Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of this meeting will be available for public review and copying within 30 days by contacting Ms. Katie Perine at the address and/or email above.

Issued in Washington, DC, on February 6, 2014.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2014–03051 Filed 2–11–14; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Proposed Agency Information Collection

**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** The Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) invites public comment on a proposed collection of information that DOE/EERE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments regarding this proposed information collection must be received on or before April 14, 2014. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

**ADDRESSES:** Written comments may be sent to Lisa Jorgensen at: U.S. Department of Energy, 15013 Denver West Parkway, Golden, CO 80401, by fax at (730–356–1790), or by email at *EEREQComments@go.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the EERE Environmental Questionnaire should be directed to Lisa Jorgensen at *EEREQComments@go.doe.gov.* The EERE Environmental Questionnaire also is available for viewing in the Golden Field Office Public Reading Room at: *http://www.eere.energy.gov/golden/Reading_Room.aspx.*

**SUPPLEMENTARY INFORMATION:** This information collection request contains:

(1) OMB No. New;

(2) Information Collection Request Title: Office of Energy Efficiency and Renewable Energy (EERE) Environmental Questionnaire;

(3) Type of Request: New;

(4) Purpose: The DOE's EERE provides federal funding through federal assistance programs to businesses, industries, universities, and other groups for renewable energy and energy efficiency research and development and demonstration projects. The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) requires that an environmental analysis be completed for all major federal actions significantly affecting the environment including projects entirely or partly financed by federal agencies. To effectively perform environmental analyses for these projects, the DOE's EERE needs to collect project-specific information from federal financial assistance awardees. DOE's EERE has developed its Environmental Questionnaire to obtain the required information and ensure that its decision-making processes are consistent with NEPA as it relates to renewable energy and energy efficiency research and development and demonstration projects;

(5) Annual Estimated Number of Total Responses: 300;

(6) Average Hours per Response: .5; and

(7) Annual Estimated Number of Burden Hours: 150.

**Statutory Authority:** National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*).

Issued in Golden, CO, on February 4, 2014.

**Robin L. Sweeney,**

*Environmental Oversight Office, Office of Energy Efficiency and Renewable Energy.*

[FR Doc. 2014–03055 Filed 2–11–14; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1827–003; *ER10–1825–003.*

*Applicants:* Cleco Power LLC.

*Description:* Supplement to January 29, 2014 Notice of Non-Material Change in Status of the Cleco Companies.

*Filed Date:* 2/5/14.

*Accession Number:* 20140205–5085.

*Comments Due:* 5 p.m. ET 2/26/14.

*Docket Numbers:* ER10–2538–001.

*Applicants:* Panoche Energy Center, LLC.

*Description:* Supplement to June 27, 2013 Triennial Market Power Study in Southwest Region and CAISO BAA of Panoche Energy Center, LLC.

*Filed Date:* 2/5/14.

*Accession Number:* 20140205–5102.

*Comments Due:* 5 p.m. ET 2/18/14.

*Docket Numbers:* ER14–1257–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* 2014–02–04_MISO and AEP Coordination Agreement Filing to be effective 2/5/2014.

*Filed Date:* 2/4/14.

*Accession Number:* 20140204–5117.

*Comments Due:* 5 p.m. ET 2/25/14.

*Docket Numbers:* ER14–1258–000.

*Applicants:* Duquesne Light Company, PJM Interconnection, L.L.C.

*Description:* Duquesne Light Company submits tariff filing per 35.13(a)(2)(iii): Duquesne submits revisions to OATT Attach H–17A to revise depreciation rates to be effective 6/1/2014.

*Filed Date:* 2/4/14.

*Accession Number:* 20140204–5119.

*Comments Due:* 5 p.m. ET 2/25/14.

*Docket Numbers:* ER14–1259–000.

*Applicants:* Florida Power & Light Company.

*Description:* FPL and New Smyrna Beach, Florida Original Service Agreement No. 311 to be effective 2/1/2014.

*Filed Date:* 2/4/14.

*Accession Number:* 20140204–5120.

*Comments Due:* 5 p.m. ET 2/25/14.

*Docket Numbers:* ER14–1260–000.

*Applicants:* Southern California Edison Company.

*Description:* GIA & Distribution Service Agreement with Oak Creek Wind Power, LLC to be effective 1/26/2014.

*Filed Date:* 2/5/14.

*Accession Number:* 20140205–5001.

*Comments Due:* 5 p.m. ET 2/26/14.

*Docket Numbers:* ER14–1261–000.

*Applicants:* NSTAR Electric Company.

*Description:* NSTAR Electric Company submits Notice of Termination of Switching and Tagging Agreement with Norwood Municipal Light Department.

*Filed Date:* 2/4/14.

*Accession Number:* 20140204–5157.

*Comments Due:* 5 p.m. ET 2/25/14.

*Docket Numbers:* ER14–1262–000.

*Applicants:* Atlantic Power and Gas LLC.

*Description:* baseline new to be effective 2/6/2014.

*Filed Date:* 2/5/14.

*Accession Number:* 20140205–5036.

*Comments Due:* 5 p.m. ET 2/26/14.

*Docket Numbers:* ER14–1263–000.

*Applicants:* Entergy Gulf States Louisiana, L.L.C.

*Description:* EGSL Compliance (ER13–432) 2–5–2014 to be effective 12/19/2013.

*Filed Date:* 2/5/14.

*Accession Number:* 20140205–5073.

*Comments Due:* 5 p.m. ET 2/26/14.

*Docket Numbers:* ER14–1264–000.

*Applicants:* Entergy Louisiana, LLC.

*Description:* ELL Compliance (ER13–432) 2–5–2014 to be effective 12/19/2013.

*Filed Date:* 2/5/14.

*Accession Number:* 20140205–5074.

*Comments Due:* 5 p.m. ET 2/26/14.

*Docket Numbers:* ER14–1265–000.

*Applicants:* Entergy Mississippi, Inc.

*Description:* EMI Compliance (ER13–432) 2–5–2014 to be effective 12/19/2013.

*Filed Date:* 2/5/14.

*Accession Number:* 20140205–5076.

*Comments Due:* 5 p.m. ET 2/26/14.

*Docket Numbers:* ER14–1266–000.

*Applicants:* Entergy New Orleans, Inc.

*Description:* ENOI Compliance (ER13–432) 2–5–2014 to be effective 12/19/2013.

*Filed Date:* 2/5/14.

*Accession Number:* 20140205–5077.

*Comments Due:* 5 p.m. ET 2/26/14.

*Docket Numbers:* ER14–1267–000.

*Applicants:* Entergy Texas, Inc.

*Description:* ETI Compliance (ER13–432) 2–5–2014 to be effective 12/19/2013.

*Filed Date:* 2/5/14.

*Accession Number:* 20140205–5078.

*Comments Due:* 5 p.m. ET 2/26/14.

*Docket Numbers:* ER14–1268–000.

*Applicants:* Entergy Arkansas, Inc.

*Description:* EAI Compliance (ER13–432) 2–5–2013 to be effective 12/18/2013.

*Filed Date:* 2/5/14.

*Accession Number:* 20140205–5079.

*Comments Due:* 5 p.m. ET 2/26/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 5, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–03078 Filed 2–11–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER14–1195–000]**

### Provider Power CT, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Provider Power CT, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is February 26, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email

*FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 6, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–03080 Filed 2–11–14; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER14–1262–000]**

### Atlantic Power and Gas LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Atlantic Power and Gas LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is February 26, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 6, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–03081 Filed 2–11–14; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2010–0848; FRL–9906–00]**

### Notice of Intent To Suspend Certain Pesticide Registrations

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

**ACTION:** Notice.

**SUMMARY:** This notice, pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), publishes 4 Notices of Intent to Suspend certain pesticide registrations issued by EPA. Each Notice of Intent to Suspend was issued following the Agency's issuance of a Data Call-In Notice (DCI), which required the registrants of the affected pesticide products containing a certain pesticide active ingredient to take appropriate steps to secure certain data, and following the registrants' failure to submit these data or to take other appropriate steps to secure the required data. The subject data were determined to be required to maintain in effect the existing registrations of the affected products. Failure to comply with the data requirements of a DCI is a basis for suspension of the affected registrations under FIFRA.

**DATES:** Each Notice of Intent to Suspend included in this **Federal Register** notice will become a final and effective suspension order automatically by operation of law 30 days after the date of the registrant's receipt of the mailed Notice of Intent to Suspend or, if the mailed Notice of Intent to Suspend is returned to the EPA Administrator as undeliverable, if delivery is refused, or if the EPA Administrator otherwise is unable to accomplish delivery to the registrant after making reasonable efforts to do so, the Notice of Intent to Suspend becomes effective 30 days after the date of publication of this notice in the **Federal Register**, unless, during that time, a timely and adequate request for a hearing is made by a person adversely affected by the Notice of Intent to Suspend, or the registrant has satisfied the EPA Administrator that the registrant has complied fully with the requirements that served as a basis for the Notice of Intent to Suspend. Unit IV. explains what must be done to avoid suspension under this notice (i.e., how to request a hearing or how to comply fully with the requirements that served as a basis for the Notice of Intent to Suspend).

**FOR FURTHER INFORMATION CONTACT:** Eric Miederhoff, Pesticide- Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: 703–347–0249; email address: *miederhoff.eric@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–0848, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

## II. Registrants Issued Notices of Intent To Suspend Active Ingredients, Products Affected, and Dates Issued

The registrants and products subject to this Notice of Intent to Suspend are listed in Table 1. A Notice of Intent to Suspend was sent to each registrant of the affected products via the U.S. Postal Service, first class mail, return receipt requested.

TABLE 1—LIST OF REGISTRANTS AND PRODUCTS SUBJECT TO SUSPENSION

| Registrant affected | Active ingredient | EPA registration No. | Product name | Date EPA issued notice of intent to suspend |
|---|---|---|---|---|
| Vikon Chemical Company Inc | Triclosan | 6390–25 | VIKOL THP | January 28, 2013. |
| CTX-Cenol | Malathion | 45385–66 | CHEM–TOX MAL 50–OS | July 19, 2013 |
| CTX-Cenol | Malathion | 45385–65 | CHEM–TOX MALATHION 3% | July 19, 2013. |
| CTX-Cenol | Malathion | 45358–43 | CHEM–TOX MAL 50%-E.C. | July 19, 2013. |

## III. Basis for Issuance of Notice of Intent To Suspend; Requirement List

The registrants failed to submit the data or information required by the Data-Call In Notice, or to take other appropriate steps to secure the required data for their pesticide products listed in Table 2 of this unit.

TABLE 2—LIST OF REQUIREMENTS

| Registrant affected | EPA registration No. | Guideline number as listed in applicable DCI | Requirement name | Date EPA issued DCI | Date registrant received DCI | Final data due date | Reason for notice of intent to suspend * |
|---|---|---|---|---|---|---|---|
| Vikon Chemical Company Inc. | 6390–25 | 830.1550 | Product identity and composition. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.1600 | Description of materials used to produce the product. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.1620 | Description of production process. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.1650 | Description of formulation process. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.1670 | Discussion of formation of impurities. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.1700 | Preliminary analysis | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.1750 | Certified limits | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.1800 | Enforcement analytical method. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.6302 | Color | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.6303 | Physical state | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.6304 | Odor | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.6313 | Stability to normal and elevated temperatures, metals, and metal ions. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.6314 | Oxidizing or reducing action. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.6315 | Flammability | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.6316 | Explodability | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.6317 | Storage stability | October 5, 2011 | November 1, 2011 | February 5, 2013 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.6319 | Miscibility | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.6320 | Corrosion characteristics. | October 5, 2011 | November 1, 2011 | February 5, 2013 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.6321 | Dieletric breakdown voltage. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.7000 | pH | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.7050 | UV/Visible adsorption | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.7100 | Viscosity | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.7200 | Melting point/melting range. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |

TABLE 2—LIST OF REQUIREMENTS—Continued

| Registrant affected | EPA registration No. | Guideline number as listed in applicable DCI | Requirement name | Date EPA issued DCI | Date registrant received DCI | Final data due date | Reason for notice of intent to suspend * |
|---|---|---|---|---|---|---|---|
| Vikon Chemical Company Inc. | 6390–25 | 830.7220 | Boiling point/boiling range. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.7300 | Density/relative density | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.7370 | Dissociation constants in water. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.7550 | Partition coefficient (n-octanol/water) shake flask method. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.7560 | Partition coefficient (n-octanol/water), generator column method. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.7570 | Partition coefficient (n-octanol/water), estimation by liquid chromatography. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.7840 | Water solubility: Column elution method, shake flask method. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.7860 | Water solubility, generator column method. | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 830.7950 | Vapor pressure | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 870.1100 | Acute Oral Toxicity | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 870.1200 | Acute dermal toxicity | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 870.1300 | Acute inhalation toxicity | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 870.2400 | Acute eye irritation | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 870.2500 | Acute dermal irritation | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| Vikon Chemical Company Inc. | 6390–25 | 870.2600 | Skin sensitization | October 5, 2011 | November 1, 2011 | June 5, 2011 | 1,2 |
| CTX-Cenol | 45385–66, 45385–65, 45385–43 | 870.1100 | Acute Oral Toxicity | June 30, 2009 | July 6, 2009 | March 6, 2010 | 3 |
| CTX-Cenol | 45385–66, 45385–65, 45385–43 | 870.1200 | Acute Dermal Toxicity | June 30, 2009 | July 6, 2009 | March 6, 2010 | 3 |
| CTX-Cenol | 45385–66, 45385–65, 45385–43 | 870.1300 | Acute Inhalation Toxicity. | June 30, 2009 | July 6, 2009 | March 6, 2010 | 3 |
| CTX-Cenol | 45385–66, 45385–65, 45385–43 | 870.2400 | Acute Eye Irritation | June 30, 2009 | July 6, 2009 | March 6, 2010 | 3 |
| CTX-Cenol | 45385–66, 45385–65, 45385–43 | 870.2500 | Acute Dermal Irritation | June 30, 2009 | July 6, 2009 | March 6, 2010 | 3 |
| CTX-Cenol | 45385–66, 45385–65, 45385–43 | 870.2600 | Acute Eye Sensitization | June 30, 2009 | July 6, 2009 | March 6, 2010 | 3 |
| CTX-Cenol | 45385–66, 45385–65, 45385–43 | 830.6317 | Storage Stability | June 30, 2009 | July 6, 2009 | November 6, 2010 | 3 |
| CTX-Cenol | 45385–66, 45385–65, 45385–43 | 830.6320 | Corrosion Characteristics. | June 30, 2009 | July 6, 2009 | November 6, 2010 | 3 |

[1] No 90-day response received.
[2] No data received.
[3] Inadequate data received.

## IV. How To Avoid Suspension Under This Notice?

1. You may avoid suspension under this notice if you or another person adversely affected by this notice properly request a hearing within 30 days of your receipt of the Notice of Intent to Suspend by mail or, if you did not receive the notice that was sent to you via USPS first class mail return receipt requested, then within 30 days from the date of publication of this **Federal Register** notice (see **DATES**). If you request a hearing, it will be conducted in accordance with the requirements of FIFRA section 6(d) and the Agency's procedural regulations in 40 CFR part 164. Section 3(c)(2)(B) of FIFRA, however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding. Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the

Agency will issue a final order at the conclusion of the hearing governing the suspension of your products. A request for a hearing pursuant to this notice must:

- Include specific objections which pertain to the allowable issues which may be heard at the hearing.
- Identify the registrations for which a hearing is requested.
- Set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing.

If a hearing is requested by any person other than the registrant, that person must also state specifically why he/she asserts that he/she would be adversely affected by the suspension action described in this notice. Three copies of the request must be submitted to: Hearing Clerk, 1900, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

An additional copy should be sent to the person who signed this notice. The request must be received by the Hearing Clerk by the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registrations by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business on the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., and will not be subject to further administrative review. The Agency's rules of practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Environmental Appeals Board, the EPA Administrator, the EPA Deputy Administrator, and the members of the staff in the immediate offices of the EPA Administrator and EPA Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within the applicable 30-day deadline period as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., the Agency determines that you have taken appropriate steps to comply with the FIFRA section 3(c)(2)(B) DCI notice. In order to avoid suspension under this option, you must satisfactorily comply with Table 2.—List of Requirements in Unit II., for each product by submitting all required supporting data/information described in Table 2 of Unit. II. and in the Explanatory Appendix (in the docket for this **Federal Register** notice) to the following address (preferably by certified mail):

Pesticide Re-Evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

For you to avoid automatic suspension under this notice, the Agency must also determine within the applicable 30-day deadline period that you have satisfied the requirements that are the bases of this notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s). The suspension of the registrations of your company's products pursuant to this notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this notice. Such compliance may only be achieved by submission of the data/information described in Table 2 of Unit II.

## V. Status of Products That Become Suspended

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this notice and so informs you in writing.

After the suspension becomes final and effective, the registrants subject to this notice, including all supplemental registrants of products listed in Table 1 of Unit II., may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. Persons other than the registrants subject to this notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Table 1 of Unit II. Nothing in this notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. in any manner which would have been unlawful prior to the suspension.

If the registrations for your product(s), listed in Table 1 of Unit II., are currently suspended as a result of failure to comply with another FIFRA section 3(c)(2)(B) DCI notice or Section 4 Data Requirements notice, this notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

It is the responsibility of the basic registrant to notify all supplementary registered distributors of a basic registered product that this suspension action also applies to their supplementary registered products. The basic registrant may be held liable for violations committed by their distributors.

Any questions about the requirements and procedures set forth in this notice or in the subject FIFRA section 3(c)(2)(B) DCI notice, should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

The Agency's authority for taking this action is contained in FIFRA sections 3(c)(2)(B) and 6(f)(2), 7 U.S.C. 136 *et seq*.

## List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 5, 2014.

**Richard P. Keigwin, Jr.,**

*Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2014–03118 Filed 2–11–14; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9906–54–Region–8]**

### Proposed CERCLA Administrative Settlement Agreement for a Bona Fide Prospective Purchaser at the Moline Street PCB Site Located in Aurora, Adams County, Colorado

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; Request for public comment.

**SUMMARY:** In accordance with section 122 (h)(l) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9622(h)(l), notice is hereby given of the proposed Administrative Settlement Agreement for Removal Action by Bona Fide Prospective Purchaser at the Moline Street PCB Site located in Aurora, Adams County, Colorado (Site). The proposed Settlement Agreement is with Hi-Tec Plastics, Incorporated (hereinafter referred to as ''Purchaser'').The Settlement Agreement requires the Purchaser to perform a portion of the removal action at the property located at 3555 Moline Street, Aurora, Colorado 80010. The remainder of the removal action selected will be performed by the Dow Chemical Company and is addressed in a separate administrative order on consent. The Settlement Agreement includes an EPA covenant not to sue the Purchaser pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a) for existing contamination at the Site. For thirty (30) days following the publication of this notice, the United States will receive written comments relating to the Settlement Agreement. The United States will consider all comments received and may modify or withdraw its consent to the Settlement Agreement if comments received disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, improper or inadequate. The United States' response to any comments received will be available for public inspection at the EPA Region 8 Records Center located at 1595 Wynkoop Street, Denver, Colorado 80202–1129, during normal business hours.

**DATES:** Comments must be submitted on or before March 14, 2014.

**ADDRESSES:** The proposed Settlement Agreement is also available for public inspection at the EPA Region 8 Records Center located at 1595 Wynkoop Street, Denver, Colorado 80202–1129, during normal business hours. A copy of the proposed settlement may be obtained from Scott Wilder, Enforcement Specialist, 8ENF–RC, U.S. EPA, 1595 Wynkoop Street, Denver, CO 80202–1129. Scott Wilder can be reached at (206) 553–6693. Comments should reference the Moline Street PCB Site, and should be addressed to Scott Wilder at the address given above.

**FOR FURTHER INFORMATION CONTACT:** Scott Wilder, 8ENF–RC, U.S. EPA, Technical Enforcement Program, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Telephone: (206) 553–6693.

Dated: January 29, 2014.

**Eddie A. Sierra,**

*Acting Assistant Regional Administrator, U.S. Environmental Protection Agency, Region 8.*

[FR Doc. 2014–03076 Filed 2–11–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OW–2011–1013; FRL–9904–51–OW]**

### Notice of Availability of EPA Documents Regarding Implementation of the Safe Drinking Water Act's Underground Injection Control Program Existing Requirements for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels

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

**ACTION:** Notice.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is releasing an interpretive memorandum and technical recommendations for implementing the Underground Injection Control (UIC) Program Class II requirements under the Safe Drinking Water Act, as amended by the Energy Policy Act in 2005, for oil and gas hydraulic fracturing (HF) activities using diesel fuels. The EPA is providing these documents to alleviate uncertainty regarding the applicability of UIC Class II permitting requirements and the agency's interpretation of the term ''diesel fuels'' in the statute. A key component of our nation's energy future is the safe, responsible development of oil and gas resources. If produced responsibly, expanded use of natural gas in lieu of other fossil fuels has the potential to improve air quality, stabilize energy prices, and provide greater certainty about future energy reserves.

**FOR FURTHER INFORMATION CONTACT:** Ronald Bergman, Underground Injection Control Program, Drinking Water Protection Division, Office of Ground Water and Drinking Water (MC–4606M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–3823; email address: *bergman.ronald@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

Today, the U.S. Environmental Protection Agency (EPA) is providing notice of the release of an interpretive memorandum and technical recommendations for EPA Regions and State Directors responsible for implementing the Underground Injection Control Program Class II requirements under the Safe Drinking Water Act, as amended by the Energy Policy Act in 2005, for oil and gas hydraulic fracturing (HF) activities using diesel fuels. In the 2005 Energy Policy Act, Congress excluded HF from UIC regulation, except where ''diesel fuels'' are used in fracturing fluids or propping agents. The technical recommendations have been developed for EPA Regional Offices to consider in applying existing Class II UIC Program regulations when permitting the use of diesel fuels for HF. EPA permit writers have the discretion to consider alternative best practices that are consistent with statutory and regulatory requirements. The EPA also anticipates that owners and operators may find the technical recommendations useful in understanding what factors EPA permit writers may consider in issuing permits for HF operations using diesel fuels. These guidelines are consistent with best practices for hydraulic fracturing in general, including those found in state regulations as well as model guidelines and voluntary standards developed by industry and stakeholders. Thus, States and Tribes responsible for issuing permits and/or updating regulations may find the recommendations useful in improving the protection of underground sources of drinking water and public health wherever hydraulic fracturing is practiced. The EPA is committed to working with co-regulators and other stakeholders to ensure that oil and shale gas development occurs safely and responsibly and to encourage use of best practices, including voluntary use of greener alternatives in HF fluids generally.

Given the significant public interest in the issue, EPA solicited comment from local, State, and Federal agencies, Tribes, and the public via a **Federal Register** (FR) notice published on May 10, 2012 (77 FR 27451). The docket number for this action is EPA–HQ–OW–

2011–1013. The comment period closed on August 23, 2012, after allowing for an extension from 60 days to 105 days, as requested by stakeholders, to give additional time to provide input. EPA considered information submitted by these entities, as well as information obtained from stakeholder outreach meetings and webinars held during the open comment period, in developing the documents released today.

**II. How can I get copies of Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels, and other related information?**

*A. Docket.* The EPA has established a docket for this document under Docket ID No. EPA–HQ–OW–2011–1013. The public docket consists of the documents specifically referenced in this notice, any public comments received and other information related to this notice. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

*B. Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet by either visiting the Underground Injection Control Program's Hydraulic Fracturing and the Safe Drinking Water Act Web site, *http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/hydraulic-fracturing.cfm* at or *http://www.regulations.gov.*

Dated: February 5, 2014.

**Peter C. Grevatt,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 2014–02929 Filed 2–11–14; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[MB Docket No. 14–16; FCC 14–8]**

## Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is required to report annually to Congress on the status of competition in markets for the delivery of video programming. This document solicits data, information, and comment on the status of competition in the market for the delivery of video programming for the Commission's Sixteenth Report (16th Report). The 16th Report will provide updated information and metrics regarding the video marketplace in 2013. Comments and data submitted in response to this document in conjunction with publicly available information and filings submitted in relevant Commission proceedings will be used for the report to Congress.

**DATES:** Interested parties may file comments, on or before March 21, 2014 and reply comments on or before April 21, 2014.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Dan Bring, Media Bureau (202) 418–2164, or email at *danny.bring@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming,* Notice of Inquiry (NOI), in MB Docket No. 14–16, FCC 14–8, released January 31, 2014. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Washington, DC 20054. Customers may contact BCPI, Inc. at their Web site *http://www.bcpi.com* or call 1–800–378–3160.

### Synopsis of Notice of Inquiry

*Introduction*

1. This Notice of Inquiry (NOI) solicits data, information, and comment on the state of competition in the delivery of video programming for the Commission's Sixteenth Report (16th Report). We seek to update the information and metrics provided in the Fifteenth Report (*15th Report*) and report on the state of competition in the video marketplace in 2013. Using the information collected pursuant to this NOI, we seek to enhance our analysis of competitive conditions, better understand the implications for the American consumer, and provide a solid foundation for Commission policy making with respect to the delivery of video programming to consumers.

2. Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act) amended the Communications Act of 1934, as amended (Act or Communications Act) and directed the Commission to establish regulations for the purpose of increasing competition and diversity in multichannel video programming distribution, increasing the availability of satellite delivered programming, and spurring the development of communications technologies. To measure progress toward these goals, Congress required the Commission to report annually on the status of competition in the market for the delivery of video programming.

3. In 1992, when Congress first required the Commission to report on the status of competition in the market for the delivery of video programming, most consumers had the limited choice of receiving over-the-air broadcast television stations or subscribing to the video service their local cable company offered. From the consumer perspective, head-to-head competition in multichannel video programming distribution (MVPD) began with the introduction of direct broadcast satellite (DBS) video services. An additional competitive alternative for MVPD service became available to consumers when telephone companies began offering video services in some areas cable operators already served. More recently, most consumers have additional alternatives for delivered video programming from online video distributors' (OVDs) offerings of video content over the Internet.

*Scope of the Report*

4. In the 16th Report, we plan to continue using the analytical framework first adopted in the *14th Report.* Under this framework, we categorize entities that deliver video programming in one of three groups—MVPDs, broadcast television stations, or OVDs. Our placement of entities into groups is an organizational tool to facilitate the presentation of information. This approach is useful for several reasons. First, the three categories reflect the historical evolution of video programming as initially delivered by over-the-air broadcast television stations, then also through MVPDs, and, more recently, via the Internet by OVDs. Second, to some degree the groupings reflect market participants' self-identification. Entities within each group tend to identify other entities in the same group as their foremost competitors in marketing materials and when describing their businesses to shareholders. Third, the business

models of entities within a group share more similarities than the business models of entities across groups. Finally, this organization parallels available data sources; some focus on one group (*e.g.,* BIA Kelsey, which focuses on broadcast) and others separately organize data in the same manner we propose (*e.g.,* SNL Kagan).

5. We recognize that the three categories are interrelated. For the 16th Report, we seek data, information, and comment on the interrelationships and competitive interactions among the three groups as well as between groups, *e.g.,* the effect of OVDs on MVPDs.

6. Consistent with the *14th and 15th Reports,* we plan to describe the providers of delivered video programming in each group, summarize their business models and competitive strategies, and present selected operating and financial statistics. We also plan to examine key industry inputs that may impact the market for the delivery of video programming, including the creators and aggregators of video programming and their distribution strategies as well as consumer premises equipment. In addition, we plan to compare video programming competition in rural and urban areas for each of the three groups and examine consumer behavior.

7. We request comment regarding the providers in each of the three groups, business models and competitive strategies, relevant operating and financial statistics, consumer behavior, urban-rural comparisons, and key industry inputs in the market. We request commenters to provide information and comments on competition using this framework, including the assessment of competition across the three groups.

8. The accuracy and usefulness of the 16th Report will depend on the quality of the data and information we receive from commenters in response to this *NOI.* We encourage thorough and substantive submissions from industry participants and consumer groups, as well as state and local regulators with knowledge of the issues raised. When possible, we will augment reported information with submissions in other Commission proceedings and from publicly available sources.

*Analytic Framework*

9. Following the analytic framework adopted initially in the *14th Report,* we categorize entities that deliver video programming into one of three groups: MVPDs, broadcast television stations, or OVDs. Within each of the three groups, we describe the group's:

- *Providers,* which may include the number, size, and footprint of the entities in the group, horizontal and vertical and/or concentration, regulatory and market conditions affecting entry, and any recent entry or exit from the group;
- *Business models and competitive strategies,* which may include the technologies entities employ to deliver programming, pricing plans, and product and service differences; and
- *Selected Operating and Financial Statistics,* which may include statistics related to the number of subscribers or viewers, revenue, and other financial indicators.

We also look upstream and downstream to examine the influence of industry inputs and consumer behavior on the delivery of video programming. We seek comment on our analytic framework, including how to incorporate a discussion of the interrelationships and competitive interactions across the three groups.

*Data*

10. We seek data that would help the Commission report on the status of competition in the market for the delivery of video programming. In previous notices of inquiry, we requested data as of June 30 of the relevant year. In the 16th Report, we plan to report on a calendar year-end basis instead of a mid-year basis. We request data as of year-end 2013 (*i.e.,* December 31, 2013). In addition, to the extent commenters can provide comparable data for year-end 2012, we seek such information to assess changes in the market for the delivery of video programming over the last year.

**Providers of Delivered Video Programming**

11. We seek data, information and comment that will allow us to describe the providers, business models and competitive strategies, and selected operating and financial statistics of MVPDs, broadcast television stations, and OVDs. To improve our description of the video products and services within each group, we seek quantitative and qualitative data and information from companies and trade associations in each group. In addition we request comment from the perspective of consumers, advertisers, content creators, content aggregators, and consumer premises equipment manufacturers on the extent to which the video services of MVPDs, broadcast stations, and OVDs are substitutes.

**Multichannel Video Programming Distributors**

*MVPD Providers*

12. MVPDs include all entities that make available for purchase multiple channels of video programming. In the *15th Report,* we determined that most MVPD subscribers use cable, DBS, or telephone MVPDs for their video service. Less than one percent of MVPD subscribers use other types of MVPDs such as home satellite dishes (HSDs), open video systems (OVS), wireless cable systems, and private cable operators (PCOs). For each type of MVPD, we seek data on the number of providers, the number of homes passed, the number of subscribers for delivered video programming, the number of linear channels and amount of non-linear programming offered, and the ability of subscribers to watch programming on multiple devices both inside and outside the home.

13. We request updated information on the number of markets where DBS operators provide local-into-local broadcast service. With respect to non-contiguous states, do DBS MVPDs offer the same video packages at the same prices in Alaska and Hawaii as they offer in the 48 contiguous states? Do subscribers need different equipment to receive DBS MVPD services in these two non-contiguous states?

14. *Horizontal Concentration.* In the *15th Report,* we provided one measure of horizontal concentration estimating the number of housing units nationwide with access to two, three, and four or more MVPDs. We seek comment on this measure of concentration. We invite analysis regarding the relationship between the number of MVPDs available to a consumer and competition. Does competition differ based on the type of MVPDs available to consumers?

15. *Vertical Integration.* In the 1992 Cable Act, Congress enacted provisions related to common ownership between cable operators and video programming networks. In the *15th Report,* we discussed vertical integration in terms of affiliations between programming networks and MVPDs. We request data, information, and comment on the vertical integration between MVPDs and video programming networks.

16. *Regulatory and Market Conditions Affecting Entry and Competition.* We seek comment on the impact of the Communications Act and Commission rules on MVPD entry and competition. Relevant regulations include franchising, effective competition, program access, program carriage, retransmission consent, must carry, exclusivity, ownership, public interest

programming, leased access, access to multiple dwelling units, inside wiring, and over-the-air reception devices.

17. We request data on the number of channels MVPDs dedicate to must-carry; public interest, including public, educational, and governmental (PEG); and leased access programming.

18. We seek comment on the impact of market conditions on MVPD entry and competition. Market conditions include economies of scale, capital requirements, first-mover advantages, access to content (*e.g.,* exclusive deals), and reaction from existing competitors. We also request information on the exit of MVPDs and comment on the reasons why MVPDs leave the video marketplace.

*MVPD Business Models and Competitive Strategies*

19. *Business Models and Competitive Strategies.* MVPDs decide the types of delivered video services they will offer, the programming they offer consumers, how they package the programming and the complementary product features they will offer (*e.g.,* high definition programming (HD), DVRs (digital video recorders), video-on-demand (VOD), and TV Everywhere). MVPDs also make decisions regarding bundles, pricing, advertising, customer service, and vertical integration with suppliers of video programming. We seek descriptions of MVPD business models and competitive strategies in the market for the delivery of video programming. How do the business models and competitive strategies of MVPDs affect broadcast stations and OVDs? We request information on MVPDs' investment in and deployment of new technologies. What benefits do these technologies provide to consumers?

*Selected MVPD Operating and Financial Statistics*

20. In the *15th Report,* we provided the following MVPD operating and financial statistics: video packages and pricing, number of video subscribers and penetration rates, revenue, investment, and profitability. We seek data on these operating and financial statistics. Are these the most relevant operating and financial statistics for reporting the status of competition in the market for the delivery of video programming? We request comment on whether there are better statistics and, if so, we request data that would allow us to report such statistics.

**Broadcast Television Stations**

*Broadcast Television Station Providers*

21. Providers of broadcast television service include both individual and group-owned stations that hold licenses to broadcast video programming to consumers. Broadcast stations package video programming and deliver it directly over the air to consumers who do not subscribe to an MVPD, as well as to MVPD subscribers who own television sets that are not connected to an MVPD service. We seek data concerning the number of households that rely on over-the-air broadcast television service, either exclusively or supplemented with OVD service. We request information regarding the demographic and geographic characteristics of such households. How many MVPD subscribers routinely view broadcast programming over-the-air on television sets that are not connected to their MVPD service?

22. *Horizontal Concentration.* We are interested in tracking common ownership of broadcast stations nationally and by DMA. Does horizontal concentration strengthen the competitive position of group owned broadcast stations in the market for the delivery of video programming? What is the impact of group ownership on the competitive position of independently-owned stations? We seek information regarding the number of existing joint sales agreements (JSAs), local marketing agreements (LMAs), and shared services agreements (SSAs) and the impact of these arrangements on the competitiveness of and service provided by broadcast stations.

23. *Vertical Integration.* We are interested in tracking the vertical integration of broadcast television stations with broadcast networks and cable networks. We seek information on vertical integration between television stations and broadcast networks or cable networks. Does vertical integration strengthen a broadcast station's ability to negotiate carriage rights with MVPDs? Are broadcast stations that are vertically integrated with broadcast networks stronger competitors in the market for the delivery of video programming?

24. *Regulatory and Market Conditions Affecting Entry and Competition.* Commission rules limit the number of broadcast television stations an entity can own in a DMA as well as limit the aggregate national audience reach of commonly owned broadcast television stations. The Commission's territorial exclusivity rule restricts the geographic area in which a television broadcast station may obtain exclusive rights to video programming. We seek comment on the impact of regulations on broadcast station entry and competition in the market for the delivery of video programming. The Middle Class Tax Relief and Job Creation Act of 2012 provides for voluntary participation of broadcast station licensees in incentive auctions. We seek comment on the impact of the upcoming incentive auction on competition in the market for the delivery of video programming.

25. We seek comment on the impact of market conditions on broadcast television station entry and competition. Market conditions include access to capital and access to programming. With respect to access to capital, we seek comment on the potential impact of our recent Declaratory Ruling regarding foreign broadcast investment. We recognize that broadcast stations depend heavily on advertising and their revenues can be impacted by local and national economic conditions as well as election cycles. We seek comment on the impact of economic conditions and political advertising on broadcast station entry and competition in the market for the delivery of video programming. We also request information and comment on entities that have exited the broadcast station business.

*Broadcast Television Station Business Models and Competitive Strategies*

26. *Business Models and Competitive Strategies.* Broadcasters' business models and competitive strategies involve decisions regarding the number of stations they own, their targeted audience demographic, programming, network affiliation, HD and multicast programming, local news, advertising, and participation in JSAs, LMAs, and SSAs. Broadcasters also make decisions regarding their Web sites and their involvement in mobile TV. We seek comment on broadcast station business models and competitive strategies, including those related to retransmission consent fees and selling programming to OVDs. What competitive strategies are broadcast stations using to strengthen their competitive position in the market for the delivery of video programming? How do the business models and competitive strategies of broadcast stations affect MVPDs and OVDs?

27. Several MVPDs itemize or have announced plans to itemize retransmission fees on consumers' monthly bills. We seek comment on the impact of itemizing retransmission fees on monthly statements. Has offering multiple program streams, HD, mobile TV, or Web sites led consumers to switch away from MVPD service to over-the-air service? Do broadcast stations use advertising or marketing to encourage consumers to switch to over-the-air video service?

28. The Advanced Television Systems Committee (ATSC) is soliciting proposals for a third generation broadcast technology and is involved in an international effort to develop a future broadcasting standard. Further, several U.S. broadcast stations have sought waivers of Commission rules to test alternative broadcasting standards. We seek comment on the extent to which these and other new developments in broadcast technology impact the market for the delivery of video programming.

*Selected Broadcast Television Station Operating and Financial Statistics*

29. In the *15th Report,* we reported the following broadcast television station operating and financial statistics: audiences for primary video streams, multicasting streams, Web sites, and mobile TV; revenue from local advertising, national advertising, political advertising, Web site advertising, and mobile TV advertising; revenue from network compensation, retransmission consent fees, and ancillary services; cash flow and pre-tax profits; and capital expenditures. Are these the most relevant operating and financial statistics for reporting the status of competition in the market for the delivery of video programming? Are there better statistics? If so, we request information that would allow us to report such statistics.

30. We seek data on the viewership of broadcast television stations from over-the-air reception, MVPD carriage, online viewing, and mobile TV. We also seek data on broadcast television station revenues from advertising, network compensation, retransmission consent fees, and ancillary services. Are there changes to the network/affiliate relationships that affect broadcast stations' revenues? We seek information and comment on the impact, if any, of JSAs, LMAs and SSAs on retransmission consent negotiations and fees. We seek data on relevant measures of broadcast station profitability and data on investment by licensees in broadcast television stations.

**Online Video Distributors**

*OVD Providers*

31. OVDs use the Internet to deliver video content to consumers. Because OVDs are relatively new entities in the market for the delivery of video programming, data regarding this category tends to be more dispersed and less standardized and reliable, relative to more long-established data for the MVPD and broadcast station categories. We seek comment on the most comprehensive and most reliable data sources for OVDs, individually and as a group. In the *15th Report,* we categorized OVDs in terms of their affiliation with the primary business of a parent company. Is there a better way to categorize OVDs?

32. *Horizontal Concentration.* OVDs are the newest group in the market for the delivery of video programming, and no widely-recognized measure of horizontal concentration has been established. What is the appropriate measure of OVD horizontal concentration? We seek relevant data for assessing the level of concentration.

33. *Vertical Integration.* Many OVDs are vertically integrated with providers of key inputs to the market for the delivery of video programming. Other OVDs have affiliations with retailers and/or manufacturers. Do these relationships strengthen the competitive positions of OVDs?

34. *Regulatory and Market Conditions Affecting Entry and Competition.* We request comment on regulatory and market conditions that affect OVD entry and competition. What influence have the Commission's Open Internet rules and IP closed captioning requirements for video programming had on OVD entry and competition? How does the relative lack of regulation for OVDs affect entry and competition?

35. What market conditions affect OVD entry and competition? For example, OVDs depend on unaffiliated ISPs to deliver video content to consumers. Does this dependence hinder entry or weaken the ability of OVDs to compete in the market for the delivery of video programming? Does the growing amount of Internet traffic associated with the delivery of OVD video programming affect OVD entry and competition? What is the impact, if any, of ISP data caps, tiered pricing, or other user fees on OVD entry and competition? To what extent are OVDs developing content delivery networks (CDNs) to ease Internet traffic congestion and to improve consumers' viewing experience? Do OVDs encounter unique issues (relative to MVPDs and broadcast stations) when acquiring content rights that impact OVD entry and competition? We request information on recent OVD entrants as well as new features of OVDs. Are there market conditions that have resulted in OVDs exiting the video marketplace?

*OVD Business Models and Competitive Strategies*

36. OVDs are a relatively new group in the market for the delivery of video programming and their business models and competitive strategies are less established, relative to MVPDs and broadcast stations. Some OVDs rely on subscriptions or per-program fees, others rely on advertising, and some OVDs rely on a combination of subscription and advertising revenue. Some offer tens-of-thousands of video programs, others offer much fewer. Some OVDs have ownership interests in little or no video programming, while others have significant ownership interests in all or most of the video programming they make available over the Internet. Some OVDs only distribute video programming previously available through other delivery technologies, while others are creating their own content. We seek comment on whether differences in business models should serve as a basis for organizing our discussion of OVD providers. We seek information on the business models and competitive strategies OVDs use to compete in the market for the delivery of video programming. How do the business models and competitive strategies of OVDs affect MVPDs and broadcast stations?

37. Do OVDs compete primarily against other OVDs or do they compete against MVPDs and broadcast stations as well? What incentives do OVDs have to attract consumers away from MVPD services and broadcast stations? Do OVDs encourage consumers to switch away from MVPD service to OVD service, or are OVDs viewed as a supplement to MVPD and broadcast service? What types of investments and innovations are OVDs making to strengthen their competitive position in the market for the delivery of video programming?

*Selected OVD Operating and Financial Statistics*

38. In the *15th Report,* we provided the following OVD operating and financial statistics: audiences, number of subscribers, revenue, profitability, and investment. Are these the appropriate statistics? What are the best sources of data for operating and financial statistics for OVDs as a group, as well as for individual OVDs? We seek information concerning the amount and type of video programming OVDs offer. We seek data on the number of consumers who view OVD programming, the number of programs they view, and the amount of time they spend viewing. We seek data on OVD revenue from subscriptions, advertising, and fees for video rentals and sales. We seek data on relevant measures of OVD profitability. Are vertically integrated OVDs more profitable than non-vertically integrated OVDs?

**Rural Versus Urban Comparison**

39. Section 628(a) of the Communications Act sets as a goal increasing the availability of video programming to persons in rural and underserved areas. As in previous reports, we plan to compare competition in the market for the delivery of video in rural markets with that in urban markets. We seek data and comment on the competitive alternatives facing consumers in the market for the delivery of video programming in rural areas relative to those facing consumers in urban areas. Are there major differences between the video services available in rural areas, relative to those available in urban areas? What percentage of consumers in rural areas lack access to a cable MVPD? Do consumers in rural areas rely more on over-the-air broadcast signals than urban consumers? Does access to high-speed Internet service needed to obtain OVD services differ between rural and urban areas?

40. We also request data and comment regarding the differences in the prices consumers pay for delivered video services in rural areas relative to urban areas. Do consumers in rural areas pay more than consumers in urban areas for similar MVPD video services? Are there significant differences in the costs paid for key industry inputs in rural areas, relative to the costs paid for similar inputs in urban areas? Do rural MVPDs pay higher programming costs and retransmission consent fees?

**Key Industry Inputs**

*Video Content Creators and Aggregators*

41. Creators of video programming are major production studios and independent production companies. Video content aggregators are entities that combine video content into packages of video programming for distribution. We seek comment on the value of continuing to discuss content aggregators and/or content creators in the 16th Report. To the extent that this information continues to be relevant, we request information regarding the number and size of content creators and aggregators. We seek information concerning the relationships between content creators and aggregators and MVPDs, broadcast stations, and OVDs. Do content creators and aggregators use different competitive strategies when dealing with MVPDs, broadcast stations, and OVDs? Is this a result of regulatory or market conditions? We seek information on trends in vertical integration among studios and networks and any effects this has on MVPDs, broadcast television stations, and OVDs.

42. In recent years, some content owners have altered the timing of release of specific video content through the various delivery windows (windowing), and the prices charged for content in each window. How have these windows changed in recent years? What effects have these changes had on competition in the market for the delivery of video programming? Do the creators of sports programming have different competitive strategies, relative to other video content creators? Have there been significant changes in the bargaining power between content owners and MVPDs, broadcast stations, and OVDs?

*Consumer Premises Equipment*

43. Consumer premises equipment (CPE) includes numerous devices that receive and display video (*e.g.,* televisions, computers, tablets, and smartphones), MVPD set-top boxes, recording equipment (*e.g.,* DVRs), video game consoles and streaming devices (*e.g.,* Xbox, Roku, and DVD and Blu-Ray players), gateways (*i.e.,* modems and wireless routers), and antennas. We seek comment on the value of including a discussion of CPE in the 16th Report. We seek comment on the major developments in CPE devices that affect competition in the market for the delivery of video programming. To what extent is IP connectivity being incorporated into CPE devices?

44. Although many CPE devices can be purchased at retail stores, a few CPE devices (*e.g.,* some MVPD set-top boxes) must be leased from the entity offering delivered video programming. We seek information and comment regarding the market for retail set-top boxes. In the *15th Report,* we discussed the development of CableCARDs, which are intended to reduce consumer dependence on MVPD-leased set-top boxes. We also noted that, on January 15, 2013, the D.C. Circuit vacated the Order adopting the CableCARD standard, but not the Order that required cable operators to separate security and base that separate security on a commonly used interface or technical standard. What effect, if any, has the D.C. Circuit's decision had on the deployment and support for CableCARDs?

45. We understand that there are certain things MVPDs, broadcasters, and OVDs must coordinate with electronics manufacturers (*e.g.,* DRM, codecs, and connectors) in order to deliver video programming to consumers. How do these coordinating activities impact competition in the market for the delivery of video programming?

**Consumer Behavior**

46. We seek information regarding trends in consumer behavior and their impact on the products and services entities offer in the market for the delivery of video programming. We request data on the number or percentage of households that have HD televisions, Internet-connected televisions, and/or DVRs. We also seek data on trends that compare consumer viewing of linear video programming with time-shifted programming. To what extent are consumers dropping (cord cutting) or limiting (cord shaving) MVPD service in favor of OVDs or a combination of OVDs and over-the-air television? Do some consumers view OVD services separately or in conjunction with over-the-air broadcast television service as a potential substitute for some or all MVPD video services? Do consumers who do not subscribe to MVPD services share common characteristics? We recognize that most consumers of OVD services also subscribe to MVPD services. Do these consumers view OVD services as a supplement to MVPD services or as a substitute for some or all MVPD services? We seek comment on the relationship between consumer behavior (*e.g.,* the practice of watching multiple episodes of a television show in one sitting, sometimes referred to as binge viewing) and the business models and competitive strategies of entities in the market for the delivery of video programming.

47. Entities in the market for the delivery of video programming advertise using television, newspapers, mailings, and Web sites to reach potential consumers and provide information about services and prices. Do consumers have sufficient information to easily compare service and price offerings? What do consumers value most when choosing between and among MVPDs, broadcast stations, and OVDs? What reasons do consumers give for switching MVPDs or switching from MVPD service to reliance on broadcast stations and/or OVDs?

**Additional Issues**

48. With this NOI, we seek data, information and comment on a wide range of issues in order to report on the status of competition in the market for the delivery of video programming. To make the 16th Report as useful as possible, are there other issues, additional information, or data we should include in the report on competition in the market for the delivery of video programming? In the interest of streamlining the report, we

request comment on issues, information, and data that could be modified or eliminated without impairing the value of the report for evaluating the status state of competition in the market for the delivery of video programming.

**Procedural Matters**

49. *Authority.* This *NOI* is issued pursuant to authority contained in sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. 54(i), 154(j), 403, and 548(g).

50. *Ex Parte Rules.* There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.204(b)(1).

51. *Comment Information.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). All filings concerning matters referenced in this Public Notice should refer to MB Docket No. 12–203.

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

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

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.
- *People With Disabilities:* Contact the FCC to request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an emailto *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

54. For further information about this Notice of Inquiry, please contact Dan Bring at (202) 418–2164, *danny.bring@fcc.gov,* or Marcia Glauberman at (202) 418–7046, *marcia.glauberman@fcc.gov.*

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2014–03100 Filed 2–11–14; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 27, 2014.

A. Federal Reserve Bank of Minneapolis (Jacqueline K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *The Gordon H. Hoffner 2011 Irrevocable Family Trust, and Wayne G. Hoffner, both of Hazen, North Dakota, individually, and as trustee of the The Gordon H. Hoffner 2011 Irrevocable Family Trust, and Lynette Janelle Bjornson,* Mandan, North Dakota, to become a member of the Hoffner Family Shareholder Group, and retroactively retain voting shares of Union Holding Company, Halliday, North Dakota, and thereby indirectly retain voting shares of The Union Bank, Beulah, North Dakota.

Board of Governors of the Federal Reserve System, February 7, 2014.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2014–03042 Filed 2–11–14; 8:45 am]

BILLING CODE 6210–01–P

## GENERAL SERVICES ADMINISTRATION

**[Notice-FTR 2014–02; Docket No. 2014–0004; Sequence 3; GSA Bulletin FTR 14–05]**

### Rental Car (Passenger Vehicle) Requirements

**AGENCY:** Office of Government-wide Policy, General Services Administration (GSA).

**ACTION:** Notice of Federal Travel Regulation (FTR) Bulletin 14–05, Calendar Year (CY) 2014 Rental Car (Passenger Vehicle) Requirements.

**SUMMARY:** Federal agencies are committed to identifying potential savings in employee rental of passenger vehicles. This notice announces FTR Bulletin 14–05 which emphasizes the requirements for federal employee rental of passenger vehicles while on official government travel. FTR Bulletin 14–05 and all other FTR bulletins are located at *gsa.gov/ftrbulletins.*

**DATES:** This notice is effective February 12, 2014.

**ADDRESSES:** General Services Administration, 1800 F Street NW., Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marcerto Barr, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202–208–7654, or by email at *travelpolicy@gsa.gov.* Please cite Notice of FTR Bulletin 14–05.

**SUPPLEMENTARY INFORMATION:** FTR Bulletin 14–05 encourages agencies to ensure their internal travel policies are consistent with the FTR requirements that all rental passenger vehicles must be authorized only when in the best interest of the Government (FTR 301–10.450(a)). Use of a rental car requires specific authorization (FTR 301–2.5(g)). FTR Bulletin 14–05 also ensures travelers are familiar with the Defense Travel Management Office (DTMO) U.S. Rental Car Agreement, which encourages travelers to rent vehicles from vendors that participate in the program. Refer to: (*http://www.defensetravel.dod.mil/site/rental.cfm*). FTR Bulletin 14–05 ensures travelers to book their passenger vehicle reservations through their agency's Electronic Travel System (ETS) where

available. When ETS is not available, travelers should arrange passenger vehicle rentals only through their agency's Travel Management Center (TMC). Use of an agency's ETS and TMC are the only two approved methods of booking passenger rental vehicles allowed by the FTR (FTR 301–50.3). Agencies should also educate their travelers to decline additional insurance, such as collision damage waiver (CDW) or theft insurance (FTR 301–10.451(a)). These types of insurance are personal expenses, so travelers generally may not be reimbursed for them.

Dated: February 4, 2014.

**Carolyn Austin-Diggs,**

*Acting Deputy Associate Administrator, Office of Asset and Transportation Management, Office of Government-wide Policy.*

[FR Doc. 2014–02981 Filed 2–11–14; 8:45 am]

**BILLING CODE 6820–14–P**

## GENERAL SERVICES ADMINISTRATION

**[Notice-MG–2014–01; Docket No. 2014–0002; Sequence 5]**

## Office of Federal High-Performance Green Buildings; Green Building Advisory Committee; Request for Membership Nominations

**AGENCY:** Office of Federal High-Performance Green Buildings, General Services Administration (GSA).

**ACTION:** Notice of solicitation of nominations for membership.

**SUMMARY:** The Administrator of the U.S. General Services Administration established the Green Building Advisory Committee on June 20, 2011 (*76 FR 35894*) pursuant to Section 494 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17123, or EISA), in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2). As the original 2-year commitments of the previously appointed members of the Committee have expired, this notice solicits additional qualified candidates for membership.

**DATES:** This notice is effective February 12, 2014.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ken Sandler, Office of Federal High Performance Green Buildings, U.S. General Services Administration (GSA), 202–219–1121.

**SUPPLEMENTARY INFORMATION:**

*Background:* The Green Building Advisory Committee (hereafter, ''the Committee'') provides advice to GSA as a mandatory Federal advisory committee, as specified in EISA and in accordance with the provisions of FACA. Under this authority, the Committee advises GSA on how the Office of Federal High-Performance Green Buildings can most effectively accomplish its mission. Extensive information about the Committee, including meeting notes and presentations, is available on GSA's Web site at *http://www.gsa.gov/gbac.*

*Membership requirements:* The EISA statute authorizes the Committee and identifies the categories of members to be included. EISA names 10 Federal agencies to be represented on the Committee, and GSA works directly with these agencies to identify their qualified representatives. This notice is focused exclusively on non-Federal members. EISA provides that, in addition to its required Federal members, the Committee shall include ''other relevant agencies and entities, as determined by the Federal Director.'' These are to include at least one representative of each of the following categories:

''(i) State and local governmental green building programs;

(ii) independent green building associations or councils;

(iii) building experts, including architects, material suppliers, and construction contractors;

(iv) security advisors focusing on national security needs, natural disasters, and other dire emergency situations;

(v) public transportation industry experts; and

(vi) environmental health experts, including those with experience in children's health.''

EISA further specifies: ''the total number of non-Federal members on the Committee at any time shall not exceed 15.'' Member responsibilities: Approved Committee members will be appointed to terms of either 2 or 4 years with the possibility of extension up to a maximum of 6 years of service. Membership is limited to the specific individuals appointed and is non-transferrable. Members are expected to attend all meetings in person, review all Committee materials, and actively provide their advice and input on topics covered by the Committee. Committee members will not receive compensation or travel reimbursements from the Government except where need has been demonstrated and funds are available.

*Solicitation for members:* This notice provides an opportunity for individuals to present their qualifications and apply for a seat on the Committee. GSA will ask former Committee members to re-apply if they are interested in continuing to serve on the Committee. GSA will review all applications and determine which candidates are likely to add the most value to the Committee based on the criteria outlined in this notice.

At a minimum, prospective members must have:

—At least 5 years of high-performance green building experience, which may include a combination of project-based, research and policy experience.

—Academic degrees, certifications and/or training demonstrating green building and related sustainability and real estate expertise.

—Knowledge of Federal sustainability and energy laws and programs.

—Proven ability to work effectively in a collaborative, multi-disciplinary environment and add value to the work of a committee.

—Qualifications appropriate to specific statutory requirements (listed above).

No person who is a Federally-registered lobbyist may serve on the Committee, in accordance with the Presidential Memorandum ''Lobbyists on Agency Boards and Commissions'' (June 18, 2010). Nomination process for Advisory Committee appointment: There is no prescribed format for the nomination. Individuals may nominate themselves or others. A nomination package shall include the following information for each nominee: (1) A letter of nomination stating the name and organizational affiliation(s) of the nominee, membership capacity he/she will serve (see statutory categories above), nominee's field(s) of expertise, and description of interest and qualifications; (2) A professional resume or CV; and (3) Complete contact information including name, return address, email address, and daytime telephone number of the nominee and nominator. GSA will consider nominations of all qualified individuals to ensure that the Committee includes the areas of green building subject matter expertise needed. GSA reserves the right to choose Committee members based on qualifications, experience, Committee balance, statutory requirements and all other factors deemed critical to the success of the Committee. Candidates may be asked to provide detailed financial information to permit evaluation of potential conflicts of interest that could impede their work on the Committee, in accordance with the requirements of FACA. The nomination period for interested candidates will close 30 days

after publication of this notice. All nominations must be submitted in sufficient time to be received by 5 p.m. Eastern Standard Time on the closing date March 14, 2014 and be addressed to email address *ken.sandler@gsa.gov*.

Dated: February 5, 2014.

**Kevin Kampschroer,**

*Federal Director, Office of Federal High-Performance Green Buildings, Office of Government-wide Policy.*

[FR Doc. 2014–02979 Filed 2–11–14; 8:45 am]

**BILLING CODE 6820–14–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Nominations to the Advisory Committee on Blood and Tissue Safety and Availability

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services..

**ACTION:** Notice.

**SUMMARY:** The Office of the Assistant Secretary for Health (OASH) is seeking nominations of qualified members of the public to be considered for appointment as members of the Advisory Committee on Blood and Tissue Safety and Availability (ACBTSA). ACBTSA is a federal advisory committee within the Department of Health and Human Services (HHS). Management support for the activities of this committee is the responsibility of the OASH. The qualified individuals will be nominated to the Secretary of Health and Human Services for consideration of appointment as members of the ACBTSA. Members of the Committee, including the Chair, are appointed by the Secretary. Members are invited to serve on the Committee for up to four-year terms.

**DATES:** All nominations must be received no later than 4 p.m. EST on March 7, 2014, at the address listed below.

**ADDRESSES:** All nominations should be mailed or delivered to Mr. James Berger, Senior Advisor for Blood and Tissue Safety Policy; Office of the Assistant Secretary for Health; Department of Health and Human Services; 1101 Wootton Parkway, Suite 250; Rockville, MD 20852. Telephone: (240) 453–8803.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Berger, Senior Advisor for Blood and Tissue Safety Policy. Contact information for Mr. Berger is provided above.

A copy of the Committee charter and roster of the current membership can be obtained by contacting Mr. Berger or by accessing the ACBTSA Web site at *http://www.hhs.gov/ash/bloodsafety/advisorycommittee/.*

**SUPPLEMENTARY INFORMATION:** The ACBTSA shall provide advice to the Secretary through the Assistant Secretary for Health. The committee shall advise on a range of policy issues to include: (1) Identification of public health issues through surveillance of blood, and tissue safety issues with national biovigilance data tools; (2) identification of public health issues that affect availability of blood, blood products, and tissues; (3) broad public health, ethical and legal issues related to the safety of blood, blood products, and tissues; (4) the impact of various economic factors (e.g., product cost and supply) on safety and availability of blood, blood products, and tissues; (5) risk communications related to blood transfusion and tissue transplantation; and (6) identification of infectious disease transmission issues for blood, organs, blood stem cells and tissues.

The Committee consists of 23 voting members; 14 public members, including the Chair, and 9 individuals designated to serve as official representative members. The public members are selected from state and local organizations, patient advocacy groups, provider organizations, academic researchers, ethicists, physicians, surgeons, scientists, risk communication experts, consumer advocates, legal organizations, and from among communities of persons who are frequent recipients of blood or blood products or who have received tissues or organs. The nine individuals who are appointed as official representative members are selected to serve the interests of the blood, blood products, tissue, and organ professional organizations or business sectors. The representative members will be from the AABB (formerly the American Association of Blood Banks); American Association of Tissue Banks; Eye Bank Association of America; an organ procurement organization; and one of either the American National Red Cross or America's Blood Centers on a rotating basis. The Committee composition can include additional representation from either the plasma protein fraction community or a trade organization; a manufacturer of blood, plasma, or other tissue/organ test kits; a manufacturer of blood, plasma or other tissue/organ equipment; and a major hospital organization or major hospital accreditation organization. Where more than one company produces a specified product or process, representatives from those companies will rotate on the same schedule as public members.

All ACBTSA members are authorized to receive the prescribed per diem allowance and reimbursement for travel expenses that are incurred to attend meetings and conduct Committee-related business, in accordance with Standard Government Travel Regulations. Individuals who are appointed to serve as public members are authorized also to receive a stipend for attending Committee meetings and to carry out other Committee-related business. Individuals who are appointed to serve as representative members for a particular interest group or industry are not authorized to receive a stipend for the performance of these duties.

This announcement is to solicit nominations of qualified candidates to fill two (2) upcoming vacant public member positions. Public members on the ACBTSA are classified as special government employees (SGEs).

**Nominations**

In accordance with the charter, persons nominated for appointment as members of the ACBTSA should be among authorities knowledgeable in tissue banking, tissue transplantation, tissue/organ transplant safety, blood banking, transfusion medicine, plasma therapies, transfusion safety, bioethics, and/or related disciplines. Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration of appointment: (a) The name, return address, daytime telephone number and affiliation(s) of the individual being nominated, the basis for the individual's nomination, the category for which the individual is being nominated, and a statement bearing an original signature of the nominated individual that, if appointed, he or she is willing to serve as a member of the committee; (b) the name, return address, and daytime telephone number at which the nominator may be contacted. Organizational nominators must identify a principal contact person in addition to the contact; and (c) a copy of a current curriculum vitae or resume for the nominated individual.

Individuals can nominate themselves for consideration of appointment to the Committee. All nominations must include the required information. Incomplete nominations will not be processed for consideration. The letter from the nominator and certification of the nominated individual must bear original signatures; reproduced copies of these signatures are not acceptable.

The Department is legally required to ensure that the membership of HHS federal advisory committees is fairly balanced in terms of points of view represented and the functions to be performed by the advisory committee. Every effort is made to ensure that the views of women, all ethnic and racial groups, and people with disabilities are represented on HHS federal advisory committees. Therefore, the Department encourages nominations of qualified candidates from these groups. The Department also encourages geographic diversity in the composition of the committee. Appointment to this committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

The Standards of Ethical Conduct for Employees of the Executive Branch are applicable to individuals who are appointed as public members of federal advisory committees. Individuals appointed to serve as public members of federal advisory committees are classified as SGEs. SGEs are government employees for purposes of the conflict of interest laws. Therefore, individuals appointed to serve as public members of the ACBTSA are subject to an ethics review. The ethics review is conducted to determine if the individual has any interests and/or activities in the private sector that may conflict with performance of their official duties as a member of the Committee. Individuals appointed to serve as public members of the Committee will be required to disclose information regarding financial holdings, consultancies, and research grants and/or contracts.

Dated: February 6, 2014.

**James J. Berger,**

*Senior Advisor for Blood and Tissue Safety Policy.*

[FR Doc. 2014–02940 Filed 2–11–14; 8:45 am]

**BILLING CODE 4150–41–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–14–13AHB]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Leroy Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden 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. Written comments should be received within 60 days of this notice.

**Proposed Project**

Risk Factors for Community-Associated *Clostridium difficile* Infection through the Emerging Infections Program (EIP)—New ICR—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The epidemiology of *C. difficile* has changed dramatically during recent years, with increases in incidence and severity of disease being reported across several countries. In addition, populations previously thought to be at low risk, such as young, healthy individuals residing in the community, are now being identified with severe *C. difficile* infection (CDI). Community-associated CDI is estimated to represent 32% of all CDI based on population-based CDI surveillance data, with an incidence of 30–40 per 100,000 population in the United States. Previous reports have shown that approximately 40% of patients acquiring community-associated CDI (CA–CDI) were not exposed to antibiotics, which is a well-recognized risk factor for CDI; suggesting that additional factors may contribute to infections. Other factors such as proton pump inhibitors have been raised as a risk factor for CDI in the community and on February 8, 2012 the U.S. Food and Drug Administration issued a communication advising physicians to consider the diagnosis of CDI among patients taking proton pump inhibitors. However, the data on the association of CDI with proton pump inhibitors are still controversial and studies to quantify this association are needed. In addition to the understanding of the factors that predispose patients to CDI, further evaluation of potential *C. difficile* exposure sources in the community is necessary to guide prevention efforts.

The sources of *C. difficile* and the risks for developing CDI in previously thought to be low-risk community populations are not well defined. Although initial evaluation of CA–CDI cases identified several potential risk factors (e.g., outpatient healthcare exposures, infants in the home, and proton pump inhibitor use), the magnitude of association of these risks with disease development using a control population has not been evaluated to date. This proposed case-control study will enable investigators to evaluate these associations and focus future investigations and prevention strategies on those factors identified as significantly associated with disease development.

CDC requests OMB approval to collect information from the public using a standardized questionnaire over a three-year period. The study will have a pediatric and an adult component given that *C. difficile* exposure sources in the community may vary by age. For example, *C. difficile* has been isolated from daycare centers' environment which may be a potential source for *C. difficile* acquisition in pediatric population, but less likely to be a source for adults.

For this project, we estimate that 129 persons ≥ 18 years of age with *C. difficile* infection (case-patients) will be contacted for the CDI study interview annually. Of those, 71 will agree and be eligible to participate in the study and will proceed to the full telephone interview. A total of 142 persons ≥ 18 years of age without C. *difficile* infection (control-patients) will be contacted for the interview annually. Of those, 71 will agree and be eligible to participate in the study and will complete the full interview. Among the pediatric group, we estimate that 141 and 194 parents of children between 1 and 5 years of age with and without *C. difficile* infection will be contacted for the interview, respectively. Among the case- and control-patients, we estimate that 78 in each group will agree and be eligible to participate in the study and will proceed to the full interview. We anticipate the screening questions to take about 5 minutes and the telephone interview 30 minutes per respondent in

both the adult and pediatric groups. There are no costs to respondents. The total response burden for the study 201 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents (adult and pediatric) | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| Case Subjects > 17 years of age | Screening Process | 129 | 1 | 5/60 |
| | Telephone interview | 71 | 1 | 30/60 |
| Control Subjects > 17 years of age | Screening Process | 142 | 1 | 5/60 |
| | Telephone interview | 71 | 1 | 30/60 |
| Case Subject ≤ 1–5 years of age | Screening Process | 141 | 1 | 5/60 |
| | Telephone interview | 78 | 1 | 30/60 |
| Control Subjects ≤ 1–5 years of age | Screening Process | 194 | 1 | 5/60 |
| | Telephone interview | 78 | 1 | 30/60 |
| Total | | | | |

**Leroy A. Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2014–03013 Filed 2–11–14; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Head Start Family and Child Experiences Survey (FACES)

*OMB No.:* 0970–0151

*Description:* The Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to collect data for a new round of the Head Start Family and Child Experiences Survey (FACES). Featuring a new ''Core Plus'' study design, FACES will provide data on a set of key indicators, including information for performance measures. The design allows for more rapid and frequent data reporting (Core studies) and serves as a vehicle for studying more complex issues and topics in greater detail and with increased efficiency (Plus studies).

In fall 2014 and spring 2015, the FACES Core study will assess the school readiness skills of Head Start children, survey their parents, and ask their Head Start teachers to rate children's social and emotional skills. In spring 2015 and again in spring 2017, the number of programs in the FACES Core study sample will increase from the 60 that are used to collect data on children's school readiness outcomes to 180 for the purpose of conducting observations in 720 Head Start classrooms. Program director, center director, and teacher surveys will also be conducted at these time points. FACES Plus studies include additional survey content of policy or programmatic interest, and may involve more programs being sampled. This notice is specific to the data collection activities needed to recruit Head Start programs and centers into FACES. A future notice will provide information about data collection for the Core and Plus studies.

The method of data collection for recruitment of all programs (180 for the FACES Core and up to 50 additional programs for FACES Plus studies) will include telephone conversations with program directors and on-site coordinators who serve as liaisons between the FACES study team and the Head Start centers. These calls will inform program staff about the purpose of the study and will be used to identify the number of centers in each program in order to compile the center sampling frame.

The purpose of this data collection is to support the 2007 reauthorization of the Head Start program (Pub.L. 110–134), which calls for periodic assessments of Head Start's quality and effectiveness.

*Respondents:* Head Start Program Directors and Staff.

ANNUAL BURDEN ESTIMATES

| Instrument | Total number of respondents | Annual number of respondents | Number of responses per respondent | Average burden hour per response | Estimated annual burden hours |
|---|---|---|---|---|---|
| Telephone script for program directors | 230 | 77 | 2 | 1 | 154 |
| Telephone script for on-site coordinators | 230 | 77 | 2 | .75 | 116 |
| Total | | | | | 270 |

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should

be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

**Karl Koerper**

*OPRE Reports Clearance Officer.*

[FR Doc. 2014–02949 Filed 2–11–14; 8:45 am]

**BILLING CODE 4184–22–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–0001]**

### Synergizing Efforts in Standards Development for Cellular Therapies and Regenerative Medicine Products; Public Workshop

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

**ACTION:** Notice of public workshop.

The Food and Drug Administration (FDA), Center for Biologics Evaluation and Research (CBER), is announcing a public workshop entitled ''Synergizing Efforts in Standards Development for Cellular Therapies and Regenerative Medicine Products.'' The purpose of the public workshop is to bring together a broad range of stakeholders to discuss current and future standards development activities involving cellular therapies and regenerative medicine products. This public workshop is being rescheduled due to the government shutdown.

*Date and Time:* The public workshop will be held on March 31, 2014, from 8:30 a.m. to 4:30 p.m.

*Location:* The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503 A), Silver Spring, MD 20993–0002. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. Please visit the following Web site for location, parking, security, and travel information: *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

*Contact Person:* Sherri Revell, Center for Biologics Evaluation and Research (HFM–49), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–2000, FAX: 301–827–3079, email: *CBERPublicEvents@fda.hhs.gov* (Subject line: SESDCTRMP Workshop).

*Registration:* Mail or fax your registration information (including name, title, firm name, address, telephone, and fax numbers) to Sherri Revell (see *Contact Person*) or email to *CBERPublicEvents@fda.hhs.gov* (Subject line: SESDCTRMP Workshop Registration) by March 24, 2014. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space available basis beginning at 7:30 a.m.

*Streaming Webcast of the Public Workshop:* For those unable to attend in person, FDA will Webcast the public workshop. To join the Webcast of the public workshop, please go to: *https://collaboration.fda.gov/sesdctrmpworkshop/.* If you have never attended an Adobe Connect meeting before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* Get a quick overview: *http://www.adobe.com/go/connectpro_overview.* Registration is not required for those attending via Adobe Connect.

If you need special accommodations due to a disability, please contact Sherri Revell (see *Contact Person*) at least 7 days in advance.

**SUPPLEMENTARY INFORMATION:** Standardization efforts concerning the clinical development of cellular therapies and regenerative medicine products have generated a great deal of interest. These efforts include standards development, expert opinion position papers, and professional practice guidelines. However, relatively little is done to coordinate the various existing efforts. In the public workshop, FDA hopes to bring together a broad range of stakeholders of cellular therapies and regenerative medicine products in order to:

- Inform stakeholders about the types of standards and standards organizations that are available currently, the role that the Federal Agencies play in standards development, and the potential role that stakeholders can play in standards development.
- Provide a high-level overview of current standards development activities in the fields of cellular therapy and regenerative medicine and the regulatory application of standards.
- Provide opportunity for discussion of areas of high interest for current or future standards development in the fields of cellular therapy and regenerative medicine and to explore ways to minimize redundancy and maximize collaboration.

We encourage all who have an interest in the development of cellular therapies and regenerative medicine products to attend the public workshop.

This public workshop is being rescheduled due to the government shutdown. It was originally scheduled for October 7, 2013 (see 78 FR 43889, July 22, 2013). Those who registered for the original workshop date must register again for the rescheduled date (see *Registration*).

*Transcripts:* Please be advised that as soon as possible after a transcript of the public workshop is available, it will be accessible at: *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/TranscriptsMinutes/default.htm.* Transcripts of the public workshop may also be requested in writing from the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: February 6, 2014.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2014–03015 Filed 2–11–14; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–0001]**

### Anti-Infective Drugs Advisory Committee; Notice of Meeting

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

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Anti-Infective Drugs Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on March 31, 2014, from 8 a.m. to 5 p.m.

*Location:* FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under

the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

*Contact Person:* Jennifer Shepherd, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 31 Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, *AIDAC@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 advisory committee 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:* During the morning session, the committee will discuss new drug applications (NDAs) 205–435 and 205–436, tedizolid phosphate tablets and tedizolid phosphate injection, submitted by Trius Therapeutics, respectively, for the proposed indication of treatment of acute bacterial skin and skin structure infections.

During the afternoon session, the committee will discuss NDA 021–883, dalbavancin hydrochloride for intravenous injection, submitted by Durata Therapeutics International B.V., for the proposed indication of treatment of acute bacterial skin and skin structure infections.

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 advisory committee 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 March 17, 2014. Oral presentations from the public will be scheduled between approximately 10:45 a.m. to 11:15 a.m., and 3:45 p.m. to 4:15 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 March 7, 2014. 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 March 10, 2014.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jennifer Shepherd 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: February 6, 2014.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2014–02942 Filed 2–11–14; 8:45 am]

BILLING CODE 4160–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–0001]**

### Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

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

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee:* Vaccines and Related Biological Products Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on March 20, 2014, from 11:30 a.m. to approximately 3:20 p.m.

*Location:* Rockwall II, Conference Room 1033, 5515 Security Lane, Rockville, MD 20852. The public is welcome to attend the meeting at the specified location where a speakerphone will be provided. Public participation in the meeting is limited to the use of the speakerphone in the conference room.

*Contact Person:* Prabha Atreya or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, 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 advisory committee 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 March 20, 2014, the committee will meet in open session to hear updates of the research programs in the Laboratory of Respiratory and Special Pathogens, Division of Bacterial, Parasitic and Allergenic Products, and in the Laboratory of Hepatitis Viruses, Division of Viral Products, Center for Biologics Evaluation and Research, FDA.

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 advisory committee 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:* On March 20, 2014, from 11:30 a.m. to approximately 2:10 p.m., the meeting is open to the public. 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 March 13, 2014. Oral presentations from the public will be scheduled between approximately 1:10 p.m. and 2:10 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 March 4, 2014. 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 March 5, 2014.

*Closed Committee Deliberations:* On March 20, 2014, from approximately 2:10 p.m. to approximately 3:20 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the report of the intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Prabha Atreya or Denise Royster 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: February 6, 2014.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2014–02943 Filed 2–11–14; 8:45 am]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR13–259 Program Project: Behavioral and Neurobiological Effects of Drug Use.

*Date:* March 3, 2014.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Boris P. Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Radiation Therapy and Biology.

*Date:* March 4–5, 2014.

*Time:* 9:00 a.m. to 9:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–435–5879, *hongb@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR–12–186: Macroeconomic Aspects of Population Aging.

*Date:* March 4, 2014.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Development of Appropriate Pediatric Formulations and Pediatric Drug Delivery System.

*Date:* March 4, 2014.

*Time:* 12:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Brain Disorders, Language, Communication and Related Neurosciences.

*Date:* March 6–7, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Vilen A. Movsesyan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Emerging Technologies in Neuroscience.

*Date:* March 7, 2014.

*Time:* 10:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Sharon S. Low, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 5104, Bethesda, MD 20892–5104, 301–237–1487, *lowss@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: February 5, 2014.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–02974 Filed 2–11–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Mapping the Conformational Cycle of Transmembrane Transporters.

*Date:* March 4–5, 2014.

*Time:* 10:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Behavioral Interventions, Obesity, and Health Outcomes.

*Date:* March 4, 2014.

*Time:* 11:30 a.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Mary Ann Guadagno, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7770, Bethesda, MD 20892, (301) 451–8011, *guadagma@csr.nih.gov.*

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Development and Disease Study Section.

*Date:* March 6–7, 2014.

*Time:* 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Aruna K. Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov.*

*Name of Committee:* Vascular and Hematology Integrated Review Group; Molecular and Cellular Hematology Study Section.

*Date:* March 10–11, 2014.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* Review grant applications.

*Place:* Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Luis Espinoza, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6183, MSC 7804, Bethesda, MD 20892, 301–495–1213, *espinozala@mail.nih.gov.*

*Name of Committee:* Oncology 1-Basic Translational Integrated Review Group; Molecular Oncogenesis Study Section.

*Date:* March 10–11, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

*Contact Person:* Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Risk, Prevention and Health Behavior.

*Date:* March 10–11, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

*Contact Person:* Martha M. Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Gastroenterology.

*Date:* March 10, 2014.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Mushtaq A Khan, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR–11–315: Systems Science Health in the Behavioral and Social Sciences.

*Date:* March 10, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Tomas Drgon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Research Project Grant.

*Date:* March 10, 2014.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, 301–435–0681, *liangw3@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: February 5, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–02971 Filed 2–11–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of 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 Board of Scientific Counselors, NIEHS.

The meeting 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 meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended

for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NIEHS.

*Date:* March 16–18, 2014.

*Closed:* March 16, 2014, 7:00 p.m. to 10:00 p.m.

*Agenda:* To review and evaluate programmatic and personnel issues.

*Place:* Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

*Open:* March 17, 2014, 8:30 a.m. to 9:05 a.m.

*Agenda:* To review and evaluate programmatic and personnel issues.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

*Open:* March 17, 2014, 9:05 a.m. to 11:50 a.m.

*Agenda:* Scientific Presentations.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

*Closed:* March 17, 2014, 11:50 a.m. to 1:30 p.m.

*Agenda:* To review and evaluate programmatic and personnel issues.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

*Open:* March 17, 2014, 1:30 p.m. to 3:00 p.m.

*Agenda:* Poster Session.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

*Closed:* March 17, 2014, 3:00 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate programmatic and personnel issues.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

*Open:* March 17, 2014, 3:45 p.m. to 5:25 p.m.

*Agenda:* Scientific Presentations.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

*Closed:* March 17, 2014, 5:25 p.m. to 5:55 p.m.

*Agenda:* To review and evaluate programmatic and personnel issues.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

*Closed:* March 17, 2014, 7:15 p.m. to 10:00 p.m.

*Agenda:* To review and evaluate programmatic and personnel issues.

*Place:* Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

*Open:* March 18, 2014, 8:30 a.m. to 9:20 a.m.

*Agenda:* Scientific Presentation.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

*Closed:* March 18, 2014, 9:20 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate programmatic and personnel issues.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

*Contact Person:* Darryl C. Zeldin, M.D., Scientific Director & Principal Investigator, Division of Intramural Research, National Institute of Environmental Health Sciences, NIH, 111 TW Alexander Drive, Maildrop A2–09, Research Triangle Park, NC 27709, 919–541–1169, *zeldin@niehs.nih.gov.*

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. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS).

Dated: February 6, 2014.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–02965 Filed 2–11–14; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Skeletal Biology Structure and Regeneration Overflow 1.

*Date:* February 21, 2014.

*Time:* 8:00 a.m. to 8:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Riverwalk, 217 N. St. Mary's Street, San Antonio, TX 78205.

*Contact Person:* Daniel F. McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Skeletal Biology Structure and Regeneration Overflow 2.

*Date:* February 21, 2014.

*Time:* 8:30 a.m. to 9:00 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Riverwalk, 217 N. St. Mary's Street, San Antonio, TX 78205.

*Contact Person:* Daniel F. McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; SBIB Pediatric and Fetal Applications.

*Date:* March 5, 2014.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* John Firrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Auditory Neuroscience.

*Date:* March 10–11, 2014.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Short Courses on Innovative Methodologies in the Behavioral and Social Sciences.

*Date:* March 11–12, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Tomas Drgon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov.*

*Name of Committee:* Vascular and Hematology Integrated Review Group; Atherosclerosis and Inflammation of the Cardiovascular System Study Section.

*Date:* March 11–12, 2014.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Loews Annapolis Hotel, 126 West Street, Annapolis, MD 21401.

*Contact Person:* Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Nephrology: Small Business and Clinical R21.

*Date:* March 11–12, 2014.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular Neuropharmacology.

*Date:* March 11, 2014.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Laurent Taupenot, Ph.D. Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4811, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Resource Center: Life Science and Biomedical Technology Center at NSLS–II.

*Date:* March 11–14, 2014.

*Time:* 6:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Brookhaven National Laboratories, 50 Bell Avenue, Building 463, Upton, NY 11973.

*Contact Person:* Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–435–1024, *allen.richon@nih.hhs.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

February 6, 2014.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–02987 Filed 2–11–14; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, ''NIAID-Special Emphasis Panel Institutional Research Training Grants (T32)''.

*Date:* February 27, 2014.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Room 3147, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Room #3147, Bethesda, MD 20892, 301–435–1614, *james.snyder@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: February 5, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–02969 Filed 2–11–14; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel Improving Health and Reducing Premature Mortality in People with Severe Mental Illness.

*Date:* March 5, 2014.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

*Contact Person:* Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel Fellowships and Dissertation Grants.

*Date:* March 11, 2014.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154G, MSC

9608, Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel NIMH R34 HIV/AIDS Applications.

*Date:* March 12, 2014.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel Services Research for ASD Across the Life Span.

*Date:* March 14, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS).

Dated:

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–02975 Filed 2–11–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Arthritis and Musculoskeletal and Skin Diseases Initial Review Group Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

*Date:* March 6–7, 2014.

*Time:* 6:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Helen Lin, Ph.D., Scientific Review Officer, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS).

Dated: February 6, 2014.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–02968 Filed 2–11–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Resource-Related Research Projects (R24).

*Date:* March 6, 2014.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Room 3266, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Maja Maric, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, Room 3266, Bethesda, MD 20892–7616, 301–451–2634, *maja.maric@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 5, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–02970 Filed 2–11–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed 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 contract proposals 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 or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel Mentored Transition to Independence.

*Date:* March 5–6, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

*Contact Person:* Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, 301–435–0287, *Pintuccig@nhlbi.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel SBIR Proposals for Pediatric Clinical Research Education.

*Date:* March 7, 2014.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Stephanie J. Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room

7196, Bethesda, MD 20892, 301–435–0291, *stephanie.webb@nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel Functional Assays to Screen Genomic Hits (R21/R33).

*Date:* March 11, 2014.

*Time:* 8:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel NHLBI Clinical Trials.

*Date:* March 11, 2014.

*Time:* 12:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Chang Sook Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0287, *carolko@mail.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel NHLBI Program Project for Oxidation and Cardiovascular Disease.

*Date:* March 13, 2014.

*Time:* 8:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Melissa E Nagelin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892, 301–435–0297, *nagelinmh2@nhlbi.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel Center for Advanced Diagnostics and Experimental Therapeutics in Lung Diseases II.

*Date:* March 13–14, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Westin BWI (Baltimore), 1100 Old Elkridge Landing Road, Baltimore, MD 21090.

*Contact Person:* Shelley S. Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924, 301–435–0303, *ssehnert@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS).

Dated: February 5, 2014.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–02973 Filed 2–11–14; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Renal Transport Program Projects.

*Date:* March 20, 2014.

*Time:* 12:00 p.m. to 3:00 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:* Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.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: February 6, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–02967 Filed 2–11–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0046]**

### Agency Information Collection Activities: Inter-Agency Alien Witness and Informant Record, Form I–854A; Agency Alien Witness and Informant Adjustment of Status, Form I–854B; Revision of a Currently Approved Collection

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted for 60 days until April 14, 2014.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615–0046 in the subject box, the agency name and Docket ID USCIS–2006–0062. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2006–0062;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

**SUPPLEMENTARY INFORMATION:**

#### Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it

public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Inter-Agency Alien Witness and Informant Record; Agency Alien Witness and Informant Adjustment of Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–854A; Form I–854B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, local, or Tribal government. Form I–854 is used by law enforcement agencies to bring alien witnesses and informants to the United States in ''S'' nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–854A—150 responses at 3 hours per response, and Form I–854B—150 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 600 annual burden hours.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: February 6, 2014.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2014–03003 Filed 2–11–14; 8:45 am]

**BILLING CODE 9111–97–P**

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0109]**

### Agency Information Collection Activities: E-Notification of Application/Petition Acceptance, Form G–1145; Extension, Without Change, of a Currently Approved Collection

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of this currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted for 60 days until April 14, 2014.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615–0109 in the subject box, the agency name and Docket ID USCIS–2009–0027. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2009–0027;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

**SUPPLEMENTARY INFORMATION:**

*Comments:* Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* E-Notification of Application/Petition Acceptance.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1145; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. If an applicant or petitioner wants to be notified via email and/or text message on their cell phone that their application or petition has been accepted, they are requested to provide their email address and/or cell phone number on the E-Notification of Application/Petition Acceptance, Form G–1145, and attach this form to the application or petition.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,180,000 responses at 3 minutes (0.05 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 59,000 annual burden hours.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: February 6, 2014.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2014–03075 Filed 2–11–14; 8:45 am]

BILLING CODE 9111–97–P

## DEPARTMENT OF HOMELAND SECURITY

### Customs and Border Protection

### Notice of Issuance of Final Determination Concerning Certain Cordless Headsets

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of final determination.

**SUMMARY:** This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of certain cordless headsets with included dongles. Based upon the facts presented, CBP has concluded that the non-TAA country where the headsets and dongles are assembled is the country where the last substantial transformation occurs. Therefore, for purposes of U.S. Government procurement, the country of origin of the headsets with included dongles is the non-TAA country where they were assembled.

**DATES:** The final determination was issued on February 3, 2014. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before March 14, 2014.

**FOR FURTHER INFORMATION CONTACT:** Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325–0034.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on February 3, 2014, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of cordless headsets with included dongles that may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H248027, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concludes that, based upon the facts presented, the last substantial transformation takes place in the non-TAA country where the headsets and dongles are assembled. Therefore, for purposes of U.S. Government procurement, the country of origin of the headsets with included dongles is the non-TAA country where they were assembled.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: February 5, 2014.

**Sandra L. Bell,**

*Executive Director, Regulations and Rulings, Office of International Trade.*

**Attachment**

HQ H248027

February 3, 2014

VAL OT:RR:CTF:VS H248027 HkP

CATEGORY: Origin

Mr. Steve Bonar
Sr. Global Customs Compliance Manager
Plantronics, Inc.
345 Encinal Street
Santa Cruz, CA 95060

RE: Trade Agreements Act; Substantial Transformation; Country of Origin of Cordless Headsets

Dear Mr. Bonar:

This is in response to your letter dated August 21, 2013, requesting a final determination on behalf of Plantronics, Inc. (''Plantronics'') pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (CBP) Regulations (19 C.F.R. Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of Plantronics Voyager Legend™ UC cordless headsets. We note that as both the foreign manufacturer and the U.S. importer, Plantronics is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination. Your request for confidential treatment regarding manufacturing locations contained in your request is granted and the information contained in square brackets will not be disclosed to the public.

FACTS:

Plantronics imports fully functional Plantronics Voyager Legend™ UC cordless headsets from [TAA country]. According to the information submitted, the cordless headsets are lightweight devices worn over the ear that allow the user to control and communicate with mobile phones and computers. The headsets utilize Bluetooth technology, which allows for the exchange of

data over short distances from fixed and mobile devices using radio frequency reception and transmission technologies. The headsets are packaged and sold with a Bluetooth Universal Serial Bus (''USB'') dongle/adapter (a hardware key for electronic copy and content protection that unlocks software functionality or decodes content) that, when plugged into a computer, allows the headset to control Voice over Internet Protocol (''VoIP'') communication by acting as a pass-through for data.

The headsets and dongles are manufactured in the countries listed below as follows:

*[TAA country]*

Individual chips containing all the components of an electronic system, known as a ''System on a Chip'' (''SoC''), are manufactured and loaded with Bluetooth protocol stack firmware and 16 megabits of programmable memory. A Bluetooth protocol stack is a series of instructions that allow Bluetooth devices to communicate with each other.

*[Non-TAA country]*

A printed circuit board containing transistors, diodes, capacitors, the Bluetooth-loaded SoC with flash memory, and an antenna is manufactured and assembled with plastic housing, buttons, speakers, microphones, sensors and batteries using solder and glue into a complete headset. The components are from [non-TAA country and TAA countries].

An antenna and an integrated circuit from [TAA country] also loaded with Bluetooth protocol stack firmware are assembled with the plastic housing to create a dongle.

*[TAA country]*

The fully assembled headsets and dongles are shipped to [TAA country]. In their imported condition, the headsets are capable of sending and receiving data but cannot utilize the data to perform tasks such as the regeneration of sound (voices).

Firmware is downloaded onto the SoC in the headset. Embedded in the firmware are ''software hooks'', the sole purpose of which is to link the headsets with non-headset devices that have corresponding software (discussed below).

After the firmware is downloaded, the interior circuitry and the exterior of the headset are coated with a water resistant nano coating, the radio frequency reception and transmission of the headset are tested, and the headsets are packaged for retail sale.

Firmware is a class of code that controls the user interface (such as buttons and voice prompts that allow a user to change languages, answer or end a call), as well as the entire data flow into and out of the headset. In addition, firmware manages the integration of the headset with a paired device, such as a computer with a VoIP softphone, by calling the software loaded onto the paired device using digital hooks embedded in the firmware code. For example, some Voyager Bluetooth headsets have Vocalyst software hooks embedded in their firmware and will only interact with a corresponding Vocalyst application on a computer, while other Bluetooth headsets that do not have Vocalyst software hooks would not be able to connect. Firmware features digital signal processing (DSP), which regenerates data into audio and transforms audio into data. In addition, firmware is responsible for: Smart Call Transfer which, during an active call, transfers audio to the appropriate device (phone or headset); disabling the call control button to eliminate pocket dialing; automatically pausing streaming audio; automatically disconnecting a call; battery meter display on smartphones; voice recognition/commands; and, Caller ID. You state that without the firmware downloaded in [TAA country], the headset could not function as designed, and would only be able to be turned on and send and receive a signal but could not interface with other devices.

Since 2008, all Bluetooth and other Voyager firmware has been designed and coded in [TAA country] by Plantronics. Firmware design involves the definition of application architecture, sequencing, and the programming language, while coding involves writing code according to specification and placing it in the predefined sequence.

Software allows the headset to integrate with multiple VoIP applications, and supports activities such as firmware updates, headset diagnostics, and the sending of emails and the reading of text messages. The software is designed in the United States, outsourced to multiple non-TAA countries to be coded according to U.S. specifications, and sequenced in the U.S. However, the software is not installed onto the headset or dongle but onto the paired non-headset device, such as a computer or mobile phone, which is not at issue in this ruling. Accordingly, the software will not be further discussed.

This ruling is issued on the assumption that the information provided to this office is correct.

ISSUE:

What is the country of origin of Plantronics Voyager Legend UC headsets for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. *See also* 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1). The Federal Procurement Regulations define ''U.S.-made end product'' as:

[A]n article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

In *Data General v. United States,* 4 Ct. Int'l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. The PROMs had no capacity to store and retrieve information until they were programmed in the U.S. by U.S. engineers who interconnected the discrete components in a defined logical pattern. The programming bestowed upon each circuit its electronic function, that is, its ''memory'' which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a U.S. project engineer with many years of experience in ''designing and building hardware.'' While replicating the program pattern from a ''master'' PROM may be a quick one-step process, the development of the pattern and the production of the ''master'' PROM required much time and expertise. The court noted that it was undisputed that programming altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a ''substantial transformation'' than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In *Texas Instruments v. United States,* 681 F.2d 778, 782 (CCPA 1982), the court observed that the substantial transformation issue is a ''mixed question of technology and customs law.''

In C.S.D. 84–86, CBP stated:

We are of the opinion that the rationale of the court in the *Data General* case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming. . . . [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

Accordingly, the programming of a device that changes or defines its use generally constitutes substantial transformation. *See also* Headquarters Ruling Letter (''HQ'') 558868, dated February 23, 1995 (programming of SecureID Card substantially transforms the card because it gives the card its character and use as part of a security system and the programming is a permanent change that cannot be undone); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitute substantial transformation); and, HQ 733085, dated July 13, 1990; *but see* HQ 732870, dated March 19, 1990 (formatting a blank diskette does not constitute substantial transformation because it does not add value, does not involve complex or highly technical operations and did not create a new or different product); HQ 734518, dated June 28, 1993, (motherboards are not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imports it).

You argue that the country of origin is [TAA country] because you believe that it is the country where the final substantial transformation takes place. You state that without the firmware with embedded software hooks loaded onto the fully assembled headsets in [TAA country], the headsets can only receive signals but cannot answer or end calls, operate by voice recognition, be turned on and off based on their positioning, direct signals to paired devices, or otherwise interact with a VoIP softphone or other Bluetooth devices. Accordingly, you believe that the firmware makes the headsets into new and different articles. In support of your position you cite *Data General supra* and HQ H170315, dated July 28, 2011.

HQ H170315 concerned the country of origin of satellite telephones. CBP was asked to consider six scenarios involving the manufacture of PCBs in one country and the programming of the PCBs with second country software either in the first country or in a third country where the phones were assembled. In the relevant scenarios (I and II), CBP found that when the PCBs were manufactured and programmed with second country software in one country and then incorporated into the phones in a third country, that the country of origin was the country in which the PCBs, which were the essence of the phones, were manufactured and programmed because the assembly operations in the third country were not sufficiently complex or meaningful to transform the PCBs into new and different articles. The third country operations consisted of assembling the imported, programmed PCBs with covers, a housing, antennas and cables by means of inserting, stacking, screwing and fitting together with clips.

In this case, the headset is fully assembled in [non-TAA country] from [non-TAA country and TAA country] components. The dongle is also made in [non-TAA country]. The headset and the dongle, both loaded with [TAA country]—origin Bluetooth firmware, are shipped to [TAA country]. Although in its imported condition the headset can send and receive signals, it cannot interface with other devices. The dongle is fully functional when imported and is able to transmit and receive data signals. In [TAA country], [TAA country]—origin firmware with embedded [TAA country]—origin software hooks is downloaded onto the headset, enabling it to communicate with corresponding software in a paired device such as a computer via the dongle. The firmware loaded in [TAA country] also enables the headset to process digital signals by filtering, measuring and compressing analog radio signals, transfer audio between a paired phone and headset during an active call, and to operate using voice recognition/commands, among other functions.

In HQ 241177, dated December 3, 2013, switches were assembled to completion in Malaysia and then shipped to Singapore, where software developed in the United States at a significant cost and over many years was downloaded onto them. The U.S.-origin software enabled the imported switches to interact with other network switches through network switching and routing, and allowed for the management of functions such as network performance monitoring and security and access control; without this software, the imported devices could not function as Ethernet switches. CBP found that the software downloading performed in Singapore did not amount to programming because programming consisted of writing, testing and implementing code necessary to make a computer function in a certain way.

Likewise, in this case the software downloading performed in [TAA country] does not amount to programming because the [TAA country] operations do not involve writing, testing or implementing the code necessary to make the headsets function in a certain way. *See Data General supra. See also* ''computer program'', *Encyclopædia Britannica* (2013), (9/19/2013) *http://www.britannica.com/EBchecked/topic/130654/computer-program,* which explains, in part, that ''a program is prepared by first formulating a task and then expressing it in an appropriate computer language, presumably one suited to the application.''

While the programming occurs in [TAA country], the downloading occurs in [TAA country]. Given these facts, we find that the country where the last substantial transformation of the headsets occurs is [non-TAA country], that is, where the major assembly processes are performed. The country of origin for purposes of U.S. Government procurement is [non-TAA country]. Likewise, we find that the country of origin of the dongles is [non-TAA country], where they were assembled.

HOLDING:

Based on the facts provided, the last substantial transformation occurs in [non-TAA country]. As such, the headsets and dongles will be considered products of [non-TAA country] for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register**, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,
Sandra L. Bell,
*Executive Director Regulations and Rulings Office of International Trade.*

[FR Doc. 2014–03029 Filed 2–11–14; 8:45 am]

BILLING CODE P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R3–ES–2013–N0008; FXES11130300000F3–145–FF03E00000]**

### Endangered and Threatened Species; Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have issued the following permits to conduct certain activities with endangered species under the authority of the Endangered Species Act, as amended (Act).

**FOR FURTHER INFORMATION CONTACT:** Mr. Karl Tinsley, U.S. Fish and Wildlife Service, Ecological Services-Endangered Species, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; (612) 713–5343 (phone) or *karl_tinsley@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:** We have issued the following permits in response to recovery permit applications we received under the authority of section 10 of the Act (16 U.S.C. 1531 *et seq.*). Each permit listed below was issued only after we determined that it was applied for in good faith, that granting the permit would not be to the disadvantage of the listed species, and that the terms and conditions of the permit were consistent with purposes and policy set forth in the Act.

| Applicant name | Permit No. | Date issued | Date expired |
|---|---|---|---|
| ENBRIDGE PIPELINES (LAKEHEAD), L.L.C | 03689B | 12/12/13 | 12/31/15 |
| BUCKEYE WIND LLC | 66315A | 07/18/13 | 07/17/43 |
| CUTHBERT, FRANCESCA J | 43541A | 05/02/13 | 12/31/15 |
| REDWING ECOLOGICAL SERVICES, INC | 07730A | 02/07/13 | 02/07/15 |
| U.S. GEOLOGICAL SURVEY | 207526 | 06/25/13 | 03/31/14 |
| MYERS-KINZIE, MELODY LYNN | 82665A | 06/14/13 | 12/31/14 |
| HELMS, DON R | 839777 | 05/09/13 | 12/31/15 |
| O'NEILL, BRIAN J | 94321A | 06/12/13 | 12/31/15 |
| BHE ENVIRONMENTAL, INC | 38789A | 08/01/13 | 12/31/15 |
| OHIO DEPARTMENT OF TRANSPORTATION | 98111A | 06/27/13 | 12/31/18 |
| OHIO ENVIRONMENTAL PROTECTION AGENCY | 98298A | 09/20/13 | 12/31/18 |
| ENVIRONMENTAL SOLUTIONS AND INNOVATIONS, INC | 02373A | 07/01/13 | 12/31/14 |
| CALL, DANIEL J | 07293B | 08/07/13 | 12/31/13 |
| CIVIL AND ENVIRONMENTAL CONSULTANTS, INC | 07358A | 06/27/13 | 12/31/13 |
| U.S. GEOLOGICAL SURVEY | 10887A | 05/23/13 | 12/31/13 |
| LEWIS ENVIRONMENTAL CONSULTING, LLC | 181256 | 06/20/13 | 12/31/13 |
| ENVIROSCIENCE, INC | 130900 | 04/22/13 | 12/31/13 |
| MILLER, LEVI D | 60999A | 03/29/13 | 12/31/13 |
| WESTERN ECOSYSTEMS TECHNOLOGY, INC | 234121 | 06/20/13 | 12/31/13 |
| BISHOP HILL ENERGY LLC | 71464A | 08/01/13 | 03/01/14 |
| BLUE CREEK WIND FARM, LLC | 07295B | 09/30/13 | 12/01/14 |
| ILLINOIS STATE MUSEUM | 10891A | 06/25/13 | 12/31/14 |
| BERNARDIN—LOCHMUELLER & ASSOCIATES | 06845A | 08/08/13 | 12/31/14 |
| GARVON, JASON MICHAEL | 38860A | 05/24/13 | 12/31/14 |
| UPPER PENINSULA LAND CONSERVANCY | 06822A | 05/17/13 | 12/31/14 |
| VANDE KOPPLE, ROBERT J | 11035A | 07/03/13 | 12/31/14 |
| TOMASI, THOMAS E | 195082 | 02/27/13 | 12/31/14 |
| USDA FOREST SERVICE | 06809A | 03/11/13 | 12/31/14 |
| MISSISSIPPI ENTOMOLOGICAL MUSEUM | 03501B | 07/03/13 | 12/31/14 |
| KAPUSINSKI, DOUGLAS J | 77530A | 09/30/13 | 12/31/14 |
| URS CORPORATION | 89559A | 05/07/13 | 12/31/14 |
| SANDERS ENVIRONMENTAL INC | 38842A | 05/22/13 | 12/31/14 |
| ROE, KEVIN J | 98039A | 06/20/13 | 08/31/15 |
| CALIFORNIA RIDGE WIND ENERGY LLC | 03502B | 07/18/13 | 12/31/15 |
| HALSALL, AMY L | 207178 | 06/27/13 | 12/31/15 |
| ILLINOIS NATURAL HISTORY SURVEY | 182436 | 04/24/13 | 12/31/15 |
| SOUTHERN ILLINOIS UNIVERSITY | 042946 | 03/12/13 | 12/31/15 |
| BASIGER, ERIN LYNN | 03450B | 07/19/13 | 12/31/15 |
| CARDNO JFNEW | 38837A | 05/13/13 | 12/31/15 |
| WALTERS, BRIANNE LORRAINE | 106220 | 03/11/13 | 12/31/15 |
| WHITAKER, JOHN O | 839763 | 03/11/13 | 12/31/15 |
| GAI CONSULTANTS, INC | 03494B | 06/11/13 | 12/31/15 |
| STANTEC CONSULTING SERVICES | 38821A | 05/02/13 | 12/31/15 |
| THIRD ROCK CONSULTANTS, LLC | 049738 | 03/11/13 | 12/31/15 |
| APPLIED SCIENCE & TECHNOLOGY, INC | 48835A | 08/12/13 | 12/31/15 |
| ECOLOGICAL SURVEY AND DESIGN, LLC | 03499B | 08/12/13 | 12/31/15 |
| LAND CONSERVANCY OF WEST MICHIGAN | 38835A | 04/29/13 | 12/31/15 |
| THE NATURE CONSERVANCY—MICHIGAN CHAPTER | 207523 | 05/08/13 | 12/31/15 |
| MINNESOTA POLLUTION CONTROL AGENCY | 31310A | 02/06/13 | 12/31/15 |
| BRADLEY, SARAH A | 38769A | 06/25/13 | 12/31/15 |
| ECOLOGICAL SPECIALISTS, INC | 206781 | 02/06/13 | 12/31/15 |
| GARDNER, JAMES E | 98032A | 06/17/13 | 12/31/15 |
| MILLS, LYNDA M | 98057A | 07/08/13 | 12/31/15 |
| ROBBINS, LYNN W | 02365A | 05/17/13 | 12/31/15 |
| ST. LOUIS ZOO | 135297 | 05/29/13 | 12/31/15 |
| WOMACK, KATHRYN M | 98063A | 07/02/13 | 12/31/15 |
| CUNNINGHAM, GEORGE R | 38862A | 05/08/13 | 12/31/15 |
| ROMELING, SHANNON ELIZABETH | 89558A | 02/14/13 | 12/31/15 |
| ECOLOGY & ENVIRONMENT, INC | 212427 | 07/08/13 | 12/31/15 |
| KREBS, ROBERT ANTHONY | 94330A | 06/13/13 | 12/31/15 |
| PERDICAS, MARLO MARIE | 206783 | 02/14/13 | 12/31/15 |
| STANTEC CONSULTING SERVICES, INC | 15027A | 06/17/13 | 12/31/15 |
| TAWSE, MERRILL BERNARD | 38785A | 02/14/13 | 12/31/15 |
| TRAGUS ENVIRONMENTAL CONSULTING, INC | 105320 | 02/06/13 | 12/31/15 |
| URS CORPORATION | 89557A | 02/05/13 | 12/31/15 |
| WATTERS, GEORGE THOMAS | 088720 | 05/07/13 | 12/31/15 |
| BAT CONSERVATION AND MANAGEMENT, INC | 212440 | 06/27/13 | 12/31/15 |
| NORMANDEAU ASSOCIATES | 98294A | 06/11/13 | 12/31/15 |
| SKELLY AND LOY, INC | 38856A | 02/05/13 | 12/31/15 |
| AHLSTEDT, STEVEN A | 113009 | 07/03/13 | 12/31/15 |
| SETTLE, DALLAS SCOTT | 98295A | 07/09/13 | 12/31/15 |
| MIERZWA, KENNETH S | 38793A | 05/20/13 | 12/31/16 |
| CARSON, ANDREW | 06873B | 12/23/13 | 12/31/16 |
| METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA | 174388 | 04/29/13 | 12/31/16 |

| Applicant name | Permit No. | Date issued | Date expired |
|---|---|---|---|
| TOLEDO ZOOLOGICAL SOCIETY | 106217 | 08/08/13 | 12/31/16 |
| MISSOURI DEPARTMENT OF CONSERVATION | 73587A | 01/30/13 | 12/31/17 |
| MISSOURI DEPARTMENT OF CONSERVATION | 96187A | 01/30/13 | 12/31/17 |
| OHIO DIVISION OF WILDLIFE | 151109 | 05/29/13 | 12/31/17 |
| GENOA NATIONAL FISH HATCHERY | 01720B | 04/24/13 | 12/31/18 |
| TEXAS TECH UNIVERSITY | 93717A | 05/14/13 | 12/31/14 |

### Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written requires for a copy of such documents to Karl Tinsley (see **FOR FURTHER INFORMATION CONTACT**).

### Authority

The authority for this notice is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 27, 2014.

**Lynn Lewis,**

*Assistant Regional Director, Ecological Services, Midwest Region.*

[FR Doc. 2014–03025 Filed 2–11–14; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–R6–ES–2014–N020; FXES11130600000D2–145–FF06E00000]**

## Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. With some exceptions, the Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

**DATES:** To ensure consideration, please send your written comments by March 14, 2014.

**ADDRESSES:** You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD–ROM of the documents. Please specify the permit you are interested in by number (e.g., Permit No. TE–XXXXXX).

- *Email: permitsR6ES@fws.gov.* Please refer to the respective permit number (e.g., Permit No. TE–XXXXXX) in the subject line of the message.
- *U.S. Mail:* Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225.
- *In-Person Drop-off, Viewing, or Pickup:* Call (303) 236–4212 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

**FOR FURTHER INFORMATION CONTACT:** Kathy Konishi, Permit Coordinator, Ecological Services, (303) 236–4212 (phone); *permitsR6ES@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:**

### Background

The Act (16 U.S.C. 1531 et seq.) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittees to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

### Applications Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following applications. Documents and other information the applicants have submitted with their applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

### Permit Application Number TE27485B

*Applicant:* Dixie State University, 225 South 700 East, Department of Biology, Saint George, UT.

The applicant requests a permit to remove and reduce to possession *Arctomecon humilis* (dwarf bearclaw poppy) in populations on Federal lands within Washington County, Utah, in conjunction with surveys and population monitoring for the purpose of enhancing the species' survival.

### Permit Application Number TE09941B

*Applicant:* Felsburg, Holt & Ullevig, Inc., 6300 South Syracuse Way, Suite 600, Centennial, CO.

The applicant requests an amendment to their existing permit to expand the geographic location of their presence/absence surveys for the American burying beetle (*Nicrophorus americanus*) to localities in Oklahoma, Texas, Missouri, and Arkansas to determine range, distribution, and abundance for the purpose of enhancing the species' survival.

### Permit Application Number TE064680

*Applicant:* Cindy Lawrence, 175 Metz Lane #203, Durango, CO.

The applicant requests a permit to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) in Utah to determine range, distribution, and abundance for the purpose of enhancing the species' survival.

### Permit Application Number TE25496B

*Applicant:* Brandon Marette, 8162 Cody Court, Arvada, CO.

The applicant requests a permit to conduct presence/absence surveys for the black-footed ferret (*Mustela nigripes*) throughout its range and the southwestern willow flycatcher (*Empidonax traillii extimus*) throughout its range, to determine distribution and abundance for the purpose of enhancing the species' survival.

### Permit Application Number TE27491B

*Applicant:* PG Environmental, LLC, 607 10th Street, Suite 307, Golden, CO.

The applicant requests a permit for bony tail (*Gila elegans*), Colorado pikeminnow (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and razorback sucker (*Xyrauchen texanus*) to conduct presence/absence surveys in Colorado in support of the U.S. Environmental Protection Agency's National Rivers and Streams Assessment to determine range, distribution, and abundance for the purpose of enhancing the species' survival.

**Permit Application Number TE26841B**

*Applicant:* Tatanka Group, LLC, P.O. Box 13938, Colorado Springs, CO.

The applicant requests a permit to conduct presence/absence surveys for the black-footed ferret (*Mustela nigripes*) in Colorado to determine range, distribution, and abundance for the purpose of enhancing the species' survival.

**Permit Application Number TE27486B**

*Applicant:* Wetland Dynamics, LLC, 3393 E CR 9 South, Monte Vista, CO.

The applicant requests a permit to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) in Colorado to determine range, distribution, and abundance for the purpose of enhancing the species' survival.

**National Environmental Policy Act**

In compliance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

**Public Availability of Comments**

All comments and materials we receive in response to these requests will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

We provide this notice under section 10 of the Act (16 U.S.C. 1531 et seq.).

Dated: February 5, 2014.

**Michael G. Thabault,**

*Assistant Regional Director, Mountain-Prairie Region.*

[FR Doc. 2014–03018 Filed 2–11–14; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCAD01000.L12200000.AL 0000.14XL1109AF]**

### Meeting of the California Desert District Advisory Council

**SUMMARY:** Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council (DAC) to the Bureau of Land Management (BLM), U.S. Department of the Interior, will participate in a field tour of BLM-administered public lands on Friday, March 14, 2014 from 8:30 a.m. to 4:30 p.m. and will meet in formal session on Saturday, March 15, 2014 from 8:00 a.m. to 4:30 p.m. at the Hilton Palm Springs, 400 E. Tahquitz Canyon Way, Palm Springs, CA 92262. Agenda for the Saturday meeting will include updates by council members, the BLM California Desert District Manager, five Field Managers, and Council subgroups. Final agenda items for the field trip and the public meeting will be posted on the DAC Web page at *http://www.blm.gov/ca/st/en/info/rac/dac.html* when finalized.

**SUPPLEMENTARY INFORMATION:** All DAC meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment may be made available by the council chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the Saturday meeting is tentatively scheduled from 8:00 a.m. to 4:30 p.m., the meeting could conclude prior to 4:30 p.m. should the council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

**FOR FURTHER INFORMATION CONTACT:** Stephen Razo, BLM California Desert District External Affairs, (951) 697–5217.

Dated: January 24, 2014.

**Teresa A. Raml,**

*California Desert District Manager.*

[FR Doc. 2014–02959 Filed 2–11–14; 8:45 am]

**BILLING CODE 4310–40–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[L1610000.PQ0000/LLCAC09000]**

### Notice of Availability of the Record of Decision for the Clear Creek Management Area Resource Management Plan, California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) and Resource Management Plan (RMP) for the Clear Creek Management Area (CCMA) located in portions of southern San Benito and western Fresno Counties, California. The California State Director signed the ROD on February 11, 2014, which constitutes the BLM's final decision and makes the CCMA RMP effective immediately.

**ADDRESSES:** Copies of the ROD and the CCMA RMP are available upon request from the Field Manager, Hollister Field Office, Bureau of Land Management, 20 Hamilton Court, Hollister, CA 95023 or via the Internet at *http://www.blm.gov/ca/st/en/fo/hollister/clear_creek_management_area/CCMA_RMP.html.* Copies of the ROD/Approved RMP are available for public inspection at the Hollister Field Office and the BLM California State Office, 2800 Cottage Way, Sacramento, CA 95825.

**FOR FURTHER INFORMATION CONTACT:** Sky Murphy, Planning & Environmental Coordinator, telephone 831–630–5039; address 20 Hamilton Court, Hollister, CA 95023; email *smurphy@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message with the above individual. You

will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The Hollister RMP, adopted in 1984, provides management guidance for the CCMA. The BLM-administered lands account for more than 84% of the 75,000-acre Clear Creek Management Area in southern San Benito and western Fresno Counties, California. The BLM also administers subsurface minerals on approximately 3,500 acres of ''split estate'' lands where the surface is owned by a non-Federal entity. Within the CCMA is the 31,000-acre Serpentine Area of Critical Environmental Concern (ACEC), which was designated based on the human health risk associated with the naturally occurring asbestos and the special status plant species endemic to the area.

The BLM prepared a series of amendments to the Hollister RMP in 1986, 1995, and 2007 to address new information and concerns regarding asbestos related health risks and rare plant species. The CCMA was not addressed in the 2007 Hollister RMP, however, because in 2004 the Environmental Protection Agency (EPA) -initiated asbestos exposure and human health risk assessment was not completed in time to be incorporated into the Hollister RMP. Upon completion of the EPA study, the BLM incorporated this new information into its CCMA planning process and associated Environmental Impact Statement (EIS).

As a result of this new health and safety information, the CCMA ROD/ Approved RMP designates the Serpentine ACEC as a ''Limited'' vehicle use area for highway-licensed vehicles authorized by permit only. The ROD also limits the number of annual visitor-use days to reduce human health risks associated with exposure to naturally occurring asbestos in the ACEC.

Based on the public's concerns about impacts to off-highway vehicle recreation, adaptive management criteria were added to the RMP that would allow the BLM to reassess its decisions on access and vehicle travel in the Serpentine ACEC if significant new information becomes available on human health risks from exposure to airborne asbestos fibers.

In addition to public health and safety and recreation and travel management, the CCMA ROD/Approved RMP also describes the BLM management actions and allowable uses that will meet desired resource conditions for natural and cultural resources. For example, approximately 5,070 acres of public lands within the CCMA exhibit wilderness characteristics. Under the CCMA ROD and Approved RMP, these lands will be managed to emphasize primitive, non-motorized recreation opportunities.

The CCMA ROD/Approved RMP reflects the BLM's ''preferred alternative'' described in the CCMA Proposed RMP and Final EIS released in March 2013. Following the release of the Proposed RMP and Final EIS, 21 protest letters were received. The BLM Director responded to each protest issue. In accordance with 43 CFR 1610.5–2(b), all protests were resolved prior to approving the RMP. No inconsistencies with State or local plans, policies or programs were identified during the Governor's consistency review of the Proposed RMP and Final EIS.

The CCMA ROD includes several decisions that are appealable. For example, the decisions designating routes of travel within designated areas for motorized vehicles are implementation decisions and are appealable under 43 CFR part 4. These decisions are contained in Appendix II of the CCMA ROD/Approved RMP. Any party adversely affected by the approved route designations may appeal within 30 days of publication of this Notice of Availability pursuant to 43 CFR part 4, subpart E. The appeal should state the specific route(s), as identified in Appendix II of the CCMA ROD/ Approved RMP, on which the decision is being appealed. The appeal must be filed with the Hollister Field Manager at the above listed address. Please consult the appropriate regulations (43 CFR part 4, subpart E) for further appeal requirements.

**Authority:** 40 CFR 1506.6.

**Thomas Pogacnik,**

*Deputy State Director.*

[FR Doc. 2014–02799 Filed 2–11–14; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWY910000 L16100000.XX0000]**

### Second Call for Nominations for the Wyoming Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to request public nominations to fill three positions for the Bureau of Land Management (BLM) Wyoming 10-member Resource Advisory Council (RAC). The RAC provides advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within the State of Wyoming.

**DATES:** All nominations must be received no later than February 27, 2014.

**ADDRESSES:** Nominations should be sent to Mr. Christian Venhuizen, Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003, (307) 775–6103.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christian Venhuizen, Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; (307) 775–6103; or email *cvenhuizen@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1739) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands.

The BLM is issuing a second call for nominations to solicit more interest in the vacant positions. Applicants who have already submitted nomination forms will still be considered for the vacancies.

The RAC has one vacancy in category one (holders of Federal grazing permits and representatives of organizations associated with energy and mineral development, timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation), one vacancy in category two (representatives of nationally or regionally recognized environmental organizations; archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations), and one vacancy in category three (representatives of

state, county, or local elected office; employees of a state agency responsible for management of natural resources; representatives of Indian tribes within or adjacent to the area for which the council is organized; representatives of academia who are employed in natural sciences; or the public-at-large). The individuals selected will fill the position for three years from the date of appointment. Nominees must be residents of Wyoming. BLM will evaluate nominees based on their education, training, experience, and their knowledge of the geographic area. Nominees should demonstrate a commitment to collaborative resource decision making. The Obama Administration prohibits individuals who are currently federal-registered lobbyists to serve on all FACA and non-FACA boards, committees, or councils. The following must accompany all nominations:

—Letters of reference from represented interest or organizations,
— A completed background information nomination form; and,
— Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, the BLM Wyoming State Office will issue a press release providing additional information for submitting nominations. Nomination forms may also be downloaded from *http://www.blm.gov/wy/st/en/advcom/rac.html.*

*Certification Statement:* I hereby certify that the BLM Wyoming Resource Advisory Council is necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the BLM.

**Donald A. Simpson,**

*State Director.*

[FR Doc. 2014–03035 Filed 2–11–14; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

**[145R5065C6, RX.59389832.1009676, RR83550000]**

### Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, discontinued, or completed since the last publication of this notice. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

**ADDRESSES:** The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Michelle Kelly, Water and Environmental Resources Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2888.

**SUPPLEMENTARY INFORMATION:** Consistent with section 9(f) of the Reclamation Project Act of *1939,* and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.
2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.
3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.
4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.
5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.
6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.
7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

### Definitions of Abbreviations Used in the Reports

ARRA American Recovery and Reinvestment Act of 2009
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project

CUP Central Utah Project
CVP Central Valley Project
CRSP Colorado River Storage Project
FR Federal Register
IDD Irrigation and Drainage District
ID Irrigation District
LCWSP Lower Colorado Water Supply Project
M&I Municipal and Industrial
NMISC New Mexico Interstate Stream Commission
O&M Operation and Maintenance
OM&R Operation, maintenance, and replacement
P–SMBP Pick-Sloan Missouri Basin Program
PPR Present Perfected Right
RRA Reclamation Reform Act of 1982
SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
USACE U.S. Army Corps of Engineers
WD Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

1. Irrigation, M&I, and Miscellaneous Water Users; Idaho, Oregon, Washington, Montana, and Wyoming: Temporary or interim irrigation and M&I water service, water storage, water right settlement, exchange, miscellaneous use, or water replacement contracts to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

3. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

4. Pioneer Ditch Company, Boise Project Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; and Juniper Flat District Improvement Company, Wapinitia Project, Oregon: Amendatory repayment and water service contracts; purpose is to conform to the RRA.

5. Queener Irrigation Improvement District, Willamette Basin Project, Oregon: Renewal of long-term water service contract to provide up to 2,150 acre-feet of stored water from the Willamette Basin Project (a USACE project) for the purpose of irrigation within the District's service area.

6. Six water user entities of the Arrowrock Division, Boise Project, Idaho: Repayment agreements with districts with spaceholder contracts for repayment, per legislation, of the reimbursable share of costs to rehabilitate Arrowrock Dam Outlet Gates under the O&M program.

7. Three irrigation water user entities, Rogue River Basin Project, Oregon: Long-term contracts for exchange of water service with three entities for the provision of up to 292 acre-feet of stored water from Applegate Reservoir (a USACE project) for irrigation use in exchange for the transfer of out-of-stream water rights from the Little Applegate River to instream flow rights with the State of Oregon for instream flow use.

8. Cowiche Creek Water Users Association and Yakima-Tieton ID, Yakima Project, Washington: Warren Act contract to allow the use of excess capacity in Yakima Project facilities to convey up to 1,583.4 acre-feet of nonproject water for the irrigation of approximately 396 acres of nonproject land.

9. East Columbia Basin ID, Columbia Basin Project, Washington: Supplement No. 3 to the 1976 Master Water Service Contract providing for the delivery of up to 30,000 acre-feet of project water for the irrigation of 10,000 acres located within the Odessa Subarea with an additional 15,000 acre-feet of project water to be made available to benefit stream flows and fish in the Columbia River under this contract or a separate operating agreement.

10. East Columbia Basin ID, Columbia Basin Project, Washington: Amendment No. 1 to Supplement No. 2 to the 1976 Master Water Service Contract providing for the delivery of up to an additional 5,450.5 acre-feet of project water for the irrigation of 1,816.8 acres located within the Odessa Subarea under this contract.

11. Conagra Foods Lamb Weston, Inc., Columbia Basin Project, Washington: Miscellaneous purposes water service contract providing for the delivery of up to 1,500 acre-feet of water from the Scooteney Wasteway for effluent management.

12. Benton ID, Yakima Project, Washington: Replacement contract to, among other things, withdraw the District from the Sunnyside Division Board of Control; provide for direct payment of the district's share of total operation, maintenance, repair, and replacement costs incurred by the United States in operation of storage division; and establish district responsibility for operation, maintenance, repair and replacement for irrigation distribution system.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

1. Irrigation water districts, individual irrigators, M&I and miscellaneous water users; California, Nevada, and Oregon: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for up to 10,000 acre-feet for use of excess capacity in project facilities for terms up to 5 years; temporary conveyance agreements with the State of California for various purposes; long-term contracts for similar service for up to 1,000 acre-feet annually.

2. Contractors from the American River Division, Delta Division, Cross Valley Canal, San Felipe Division, West San Joaquin Division, San Luis Unit, and Elk Creek Community Services District; CVP; California: Renewal of 30 interim and long-term water service contracts; water quantities for these contracts total in excess of 2.1M acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Public Law 102–575. Prior to completion of negotiation of long-term renewal contracts, existing interim renewal water service contracts may be renewed through successive interim renewal of contracts.

3. Redwood Valley County WD, SRPA, California: Restructuring the repayment schedule pursuant to Public Law 100–516.

4. El Dorado County Water Agency, CVP, California: M&I water service contract to supplement existing water supply. Contract will provide for an amount not to exceed 15,000 acre-feet annually authorized by Public Law 101–514 (Section 206) for El Dorado County Water Agency. The supply will be subcontracted to El Dorado ID and Georgetown Divide Public Utility District.

5. Sutter Extension WD, Delano-Earlimart ID, Pixley ID, the State of California Department of Water Resources, and the State of California Department of Fish and Wildlife; CVP; California: Pursuant to Public Law 102–575, agreements with non-Federal entities for the purpose of providing funding for CVPIA refuge water conveyance and/or facilities improvement construction to deliver water for certain Federal wildlife refuges, State wildlife areas, and private wetlands.

6. CVP Service Area, California: Temporary water acquisition agreements for purchase of 5,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by

Public Law 102–575 for terms of up to 5 years.

7. El Dorado ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the amount of up to 17,000 acre-feet annually. The contract will allow CVP facilities to be used to deliver nonproject water to the District for M&I use within its service area.

8. Horsefly, Klamath, Langell Valley, and Tulelake IDs; Klamath Project; Oregon: Repayment contracts for SOD work on Clear Lake Dam. These districts will share in repayment of costs, and each district will have a separate contract.

9. Casitas Municipal WD, Ventura Project, California: Repayment contract for SOD work on Casitas Dam.

10. Warren Act Contracts, CVP, California: Execution of long-term Warren Act contracts (up to 25 years) with various entities for conveyance of nonproject water in the CVP.

11. Tuolumne Utilities District (formerly Tuolumne Regional WD), CVP, California: Long-term water service contract for up to 9,000 acre-feet from New Melones Reservoir, and possibly a long-term contract for storage of nonproject water in New Melones Reservoir.

12. Banta Carbona ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

13. Byron-Bethany ID, CVP, California: Long-term operational contract for conveyance of nonproject water and exchange of project water using Delta Division facilities of the CVP.

14. Madera-Chowchilla Water and Power Authority, CVP, California: Agreement to transfer the OM&R and certain financial and administrative activities related to the Madera Canal and associated works.

15. Sacramento Suburban WD, CVP, California: Execution of long-term Warren Act contract for conveyance of 29,000 acre-feet of nonproject water. The contract will allow CVP facilities to be used to deliver nonproject water provided from the Placer County Water Agency to the District for use within its service area.

16. Town of Fernley, State of California, City of Reno, City of Sparks, Washoe County, State of Nevada, Truckee-Carson ID, and any other local interest or Native American Tribal Interest who may have negotiated rights under Public Law 101–618; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and the Preliminary Settlement Agreement. The contracts shall be consistent with the Truckee River Water Quality Settlement Agreement and the terms and conditions of the Truckee River Operating Agreement.

17. Delta Lands Reclamation District No. 770, CVP, California: Long-term Warren Act contract for conveyance of up to 300,000 acre-feet of nonproject flood flows via the Friant-Kern Canal for flood control purposes.

18. Pershing County Water Conservation District, Pershing County, Lander County, and the State of Nevada; Humboldt Project; Nevada: Title transfer of lands and features of the Humboldt Project.

19. Mendota Wildlife Area, CVP, California: Reimbursement agreement between the California Department of Fish and Wildlife and Reclamation for conveyance service costs to deliver Level 2 water to the Mendota Wildlife Area during infrequent periods when the Mendota Pool is down due to unexpected but needed maintenance. This action is taken pursuant to Public Law 102–575, Title 34, Section 3406(d)(1), to meet full Level 2 water needs of the Mendota Wildlife Area.

20. San Luis WD, CVP, California: Proposed partial assignment of 2,400 acre-feet of the District's CVP supply to Santa Nella County WD for M&I use.

21. Placer County Water Agency, CVP, California: Proposed exchange agreement under section 14 of the 1939 Act to exchange up to 71,000 acre-feet annually of the Agency's American River Middle Fork Project water for use by Reclamation, for a like amount of CVP water from the Sacramento River for use by the Agency.

22. Irrigation Contractors, Klamath Project, Oregon: Amendment of repayment contracts or negotiation of new contracts to allow for recovery of additional capital costs.

23. Orland Unit Water User's Association, Orland Project, California: Repayment contract for the SOD costs assigned to the irrigation of Stony Gorge Dam.

24. Goleta WD, Cachuma Project, California: An agreement to transfer title of the federally owned distribution system to the District subject to approved legislation.

25. Colusa County WD, CVP, California: Execution of a long-term Warren Act contract for conveyance of up to 40,000 acre-feet of groundwater per year through the use of the Tehama-Colusa Canal.

26. County of Tulare, CVP, California: Proposed assignment of the County's Cross Valley Canal water supply in the amount of 5,308 acre-feet to its various subcontractors. Water will be used for both irrigation and M&I purposes.

27. City of Santa Barbara, Cachuma Project, California: Execution of a temporary contract and a long-term Warren Act contract with the City for conveyance of nonproject water in Cachuma Project facilities.

28. Water user entities responsible for payment of O&M costs for Reclamation projects in California, Nevada, and Oregon: Contracts for extraordinary maintenance and replacement funded pursuant to ARRA. Added costs to rates to be collected under irrigation and interim M&I ratesetting policies.

29. Water user entities responsible for payment of O&M costs for Reclamation projects in California, Nevada, and Oregon: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

30. Cachuma Operation and Maintenance Board, Cachuma Project, California: Amendment to SOD Contract No. 01–WC–20–2030 to provide for increased SOD costs associated with Bradbury Dam.

31. Reclamation will become signatory to a three-party conveyance agreement with the Cross Valley Contractors and the California State Department of Water Resources for conveyance of Cross Valley Contractors' CVP water supplies that are made available pursuant to long-term water service contracts.

32. Westlands WD, CVP, California: Negotiation and execution of a long-term repayment contract to provide reimbursement of costs related to the construction of drainage facilities. This action is being undertaken to satisfy the Federal Government's obligation to provide drainage service to Westlands located within the San Luis Unit of the CVP.

33. San Luis WD, Meyers Farms Family Trust, and Reclamation, CVP, California: Revision of an existing contract between San Luis WD, Meyers Farms Family Trust, and Reclamation providing for an increase in the exchange of water from 6,316 to 10,526 acre-feet annually and an increase in the storage capacity of the bank to 60,000 acre-feet.

34. San Joaquin Valley National Cemetery, U.S. Department of Veteran Affairs, Delta Division, CVP, California: Negotiation of a 5-year wheeling agreement with an effective date in 2011 is pending. A wheeling agreement with the State of California, Department of Water Resources provides for the conveyance and delivery of CVP water through State of California facilities to

the San Joaquin Valley National Cemetery.

35. Byron-Bethany ID, CVP, California: A current wheeling agreement with the State of California, Department of Water Resources and Byron-Bethany ID for the conveyance and delivery of CVP water through the California State Aqueduct to Musco Family Olive Company, a customer of Byron-Bethany.

36. Contra Costa WD, CVP, California: Amendment to an existing O&M agreement to transfer O&M of the Contra Costa Rock Slough Fish Screen to the district. Initial construction funding provided through ARRA.

37. Irrigation water districts, individual irrigators and M&I water users, CVP, California: Temporary water service contracts for terms not to exceed 1 year for up to 100,000 acre-feet of surplus supplies of CVP water resulting from an unusually large water supply, not otherwise storable for project purposes, or from infrequent and otherwise unmanaged flood flows of short duration.

38. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, CVP, California: Temporary Warren Act contracts for terms up to 5 years providing for use of excess capacity in CVP facilities for annual quantities exceeding 10,000 acre-feet.

39. City of Redding, CVP, California: Proposed partial assignment of 30 acre-feet of the City of Redding's CVP water supply to the City of Shasta Lake for M&I use.

40. Langell Valley ID, Klamath Project; Oregon: Title transfer of lands and facilities of the Klamath Project.

41. Sacramento River Division, CVP, California: Administrative assignments of various Sacramento River Settlement Contracts.

42. Conaway Preservation Group, LLC, Sacramento River Division, CVP, California: Proposed assignment of 10,000 acre-feet of water under an existing Sacramento River Settlement Contract to the Woodland-Davis Clean Water Agency.

43. California Department of Fish and Game, CVP, California: To extend the term of and amend the existing water service contract for the Department's San Joaquin Fish Hatchery to allow an increase from 35 cubic feet per second to 60 cubic feet per second of continuous flow to pass through the Hatchery prior to it returning to the San Joaquin River.

44. Orland Unit Water User's Association, Orland Project, California: Title transfer of lands and features of the Orland Project.

45. Santa Clara Valley WD, CVP, California: Second amendment to Santa Clara Valley WD's water service contract to add an additional point of delivery.

46. PacifiCorp, Klamath Project, Oregon and California: Transfer of O&M of Link River Dam and associated facilities. Contract will allow for the continued O&M by PacifiCorp.

47. Tulelake ID, Klamath Project, Oregon and California: Transfer of O&M of Station 48 and gate on Drain #1, Lost River Diversion Channel.

48. Fresno County Waterworks No. 18, Friant Division, CVP, California: Execution of an agreement to provide for the O&M of select Federal facilities by Fresno County Waterworks No. 18.

49. U.S. Fish and Wildlife Service, Tulelake ID; Klamath Project; Oregon and California: Water service contract for deliveries to Lower Klamath National Wildlife Refuge, including transfer of O&M responsibilities for the P Canal system.

50. Tulelake ID, Klamath Project, Oregon and California: Amendment of repayment contract to eliminate reimbursement for P Canal O&M costs.

51. East Bay Municipal Utility District, CVP, California: Long-term Warren Act contract for storage and conveyance of up to 47,000 acre-feet annually.

52. Sacramento County Water Agency, CVP. California: Assignment of 7,000 acre-feet of CVP water to the City of Folsom.

**Discontinued Contract Action**

1. Mercy Springs WD, CVP, California: Proposed partial assignment of 2,825 acre-feet of the District's CVP supply to San Luis WD for irrigation and M&I use.

**Completed Contract Action**

1. San Luis and Delta-Mendota Water Authority, CVP, California: Amendment to an existing O&M agreement to transfer O&M of the Delta-Mendota Canal California Aqueduct Intertie Project to the Authority. Initial construction funding provided through ARRA. Executed on July 13, 2012.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

1. Milton and Jean Phillips, BCP, Arizona: Develop a Colorado River water delivery contract for 60 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

2. John J. Peach, BCP, Arizona: Develop a Colorado River water delivery contracts for 456 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

3. Gila Project Works, Gila Project, Arizona: Title transfer of facilities and certain lands in the Wellton-Mohawk Division from the United States to the Wellton-Mohawk IDD.

4. Sherrill Ventures, LLLP and Green Acres Mohave, LLC; BCP; Arizona: Draft contracts for PPR No. 14 for 1,080 acre-feet of water per year as follows: Sherrill Ventures, LLLP, a draft contract for 954.3 acre-feet per year and Green Acres Mohave, LLC, a draft contract for 125.7 acre-feet per year.

5. Water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, California, Nevada, and Utah: Contracts for extraordinary maintenance and replacement funded pursuant to ARRA.

6. Water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, California, Nevada, and Utah: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Pub. L. 111–11.

7. Bureau of Land Management, LCWSP, California: Amend contract No. 8–07–30–W0375 to add a new point of diversion and place of use; San Bernardino County's Park Moabi, a Bureau of Land Management-leased site.

8. San Carlos Apache Tribe and the Town of Gilbert, CAP, Arizona: Proposed 100-year lease not to exceed 5,925 acre-feet per year of CAP water from the Tribe to Gilbert.

9. City of Yuma, BCP, Arizona: Amend the City's contract to extend the term (which expired October 2012) for 5 years during which time a consolidated contract will be developed.

10. City of Needles, LCWSP, California: Develop an agreement between Reclamation and the City of Needles for the funding of the design approval and construction of Stage II of the Project.

11. San Carlos Apache Tribe and the Town of Gilbert, CAP, Arizona: Execute Amendment No. 3 to a CAP water lease to extend the term of the lease in order for the San Carlos Apache Tribe to lease 20,000 acre-feet of its CAP water to the Town of Gilbert during calendar year 2014.

12. Fort McDowell Yavapai Nation and the Town of Gilbert, CAP, Arizona: Execute Amendment No. 3 to a CAP water lease to extend the term of the lease from January 1, 2014 to December 31, 2014, and increase the quantity leased from 13,683 acre-feet to 13,933 acre-feet. The lease is for Fort McDowell Yavapai Nation's CAP water to be leased to the Town of Gilbert.

13. Bard Water District, Yuma Project, California: Supersede and replace the Bard Water District O&M contract for the Yuma Project, California, Reservation Division, Indian Unit, to reflect that appropriated funds are no longer available, and to specify an alternate process for transfer of funds. In addition, other miscellaneous processes required for Reclamation's contractual administration and oversight will be updated to ensure the Federal Indian Trust obligation for reservation water and land are met.

14. Arizona Recreational Facilities, LLC, BCP, Arizona: Execute a proposed assignment of a Colorado River water delivery contract and transfer of the entitlement in the amount of 2,673.3 acre-feet per year from Arizona Recreation Facilities to GSC Farm, LLC.

15. Metropolitan Water District of Southern California, the San Diego County Water Authority, and the Otay Water District; BCP; California: Execute a proposed Amendment No. 2 to extend the ''Agreement for Temporary Emergency Delivery of a Portion of the Mexican Treaty Waters of the Colorado River to the International Boundary in the Vicinity of Tijuana, Baja California, Mexico, and the Operation of Facilities in the United States'' until November 9, 2018.

16. San Carlos Apache Tribe and Pascua Yaqui Tribe, CAP, Arizona: Execute a CAP water lease among the United States, the San Carlos Apache Tribe, and the Pascua Yaqui Tribe in order for the San Carlos Apache Tribe to lease 2,000 acre-feet of its CAP water to the Pacua Yaqui Tribe during calendar year 2014 under the terms and conditions of the lease.

17. Flowing Wells ID and the City of Tucson, CAP, Arizona: Execute a proposed partial assignment to the City of Tucson of 19 acre-feet per year from the District's CAP water entitlement amount of 4,354 acre-feet per year.

18. Fort McDowell Yavapai Nation, the Salt River Project Agricultural Improvement and Power District, and the Salt River Valley Water Users' Association, CAP, Arizona: Approve a proposed exchange agreement for 13,933 acre-feet of CAP water for Verde River water.

19. Central Arizona Water Conservation District, CAP, Arizona: Negotiate a standard form of wheeling agreement for the wheeling of nonproject water, in accordance with the District's existing contract.

20. Ogram Farms, BCP, Arizona: Revise Exhibit A of the contract to change the contract service area and points of diversion/delivery.

21. Ogram Boys Enterprises, Inc., BCP, Arizona: Revise Exhibit A of the contract to change the contract service area and points of diversion/delivery.

**Discontinued Contract Action**

1. Imperial ID, BCP, California: Develop an agreement between Reclamation and Imperial ID for the funding of the design approval and construction of a facilities electrical upgrade at Imperial Dam.

**Completed Contract Action**

17. White Mountain Apache Tribe and Various Entities, CAP, Arizona: Execute a CAP water delivery contract with the Tribe and leases with various entities for a total of up to 25,000 acre-feet annually of CAP water in accordance with the settlement act (Title III of Pub. L. 111–291) and the settlement agreement. Completed September 11, 2013. Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

1. Individual irrigators, M&I, and miscellaneous water users; Initial Units, CRSP; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Various Contactors, San Juan-Chama Project, New Mexico: The United States continues leasing water from various project contractors to stabilize flows in a critical reach of the Rio Grande in order to meet the needs of irrigators and preserve habitat for the silvery minnow. Reclamation leased approximately 53,000 acre-feet of water from willing lessors in 2013.

3. Individual Irrigators, Carlsbad Project, New Mexico: The United States proposes to continue entering into forbearance contracts and lease agreements with individuals who have privately held water rights to divert nonproject water either directly from the Pecos River or from shallow/artesian wells in the Pecos River Watershed. Reclamation contracted with Fort Sumner ID for partial and full-season fallowing in 2013. This action resulted in additional water in the Pecos River to make up for the water depletions caused by changes in operations at Sumner Dam which were made to improve conditions for a threatened species, the Pecos Bluntnose Shiner.

4. City of Page, Arizona, Glen Canyon Unit, CRSP, Arizona: Long-term contract for 975 acre-feet of water for municipal purposes.

5. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

6. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado: Water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

7. Public Service Company of New Mexico, Reclamation, and the U.S. Fish and Wildlife Service; San Juan River Basin Recovery Implementation Program: The agreement identifies that Reclamation may provide cost-share funding for the recovery monitoring and research, and O&M of the constructed fish passage at the Public Service Company's site pursuant to Pub. L. 106–392, dated October 30, 2000 (114 Stat. 1602).

8. Jensen Unit, Central Utah Project, Utah: The Uintah Water Conservancy District has requested a contract with provisions to prepay 2,675 acre-feet of the 3,300 acre-feet of project M&I water from Red Fleet Reservoir.

9. Aaron Million, Million Conservation Resource Group, Flaming Gorge Storage Unit, CRSP: Mr. Million has requested a standby contract to secure the first right to contract for up to 165,000 acre-feet annually of M&I water service from Flaming Gorge Reservoir for a proposed privately financed and constructed transbasin diversion project.

10. Albuquerque Bernalillo County Water Utility Authority and Reclamation, San Juan-Chama Project, New Mexico: Contract to store up to 50,000 acre-feet of project water in Elephant Butte Reservoir. The proposed contract would have a 40-year maximum term, which due to ongoing consultations with the U.S. Fish and Wildlife Service, the existing Contract No. 3–CS–53–01510 which expired on January 26, 2008, has been extended annually. The Act of December 29, 1981, Pub. L. 97–140, 95 Stat. 1717 provides authority to enter into this contract. Reclamation is conducting environmental compliance to proceed with the 40-year contract. In the interim, Reclamation continues to execute annual renewals until a long-term contract can be executed.

11. Dolores Water Conservancy District, Dolores Project, Colorado: The District has requested a water service contract for 1,402 acre-feet of newly

identified project water for irrigation. The proposed water service contract will provide 417 acre-feet of project water for irrigation of the Ute Enterprise and 985 acre-feet for use by the District's full-service irrigators.

12. Elkhead Reservoir Enlargement: This contract will supersede Contract No. 05–WC–40–420. The proposed contract will include the Recovery Program's pro-rata share of the actual construction cost plus fish screen costs. Also identified in this proposed contract is the pro-rata share of the actual construction costs for the other signatory parties. Upon payment by Recovery Program, this proposed contract will ensure a permanent water supply for the endangered fish.

13. Bridger Valley Water Conservancy District, Lyman Project, Wyoming: The District has requested that its Meeks Cabin repayment contract be amended from two 25-year contacts to one 40-year contract.

14. City of Santa Fe and Reclamation, San Juan-Chama, New Mexico: Contract to store up to 50,000 acre-feet of project Water in Elephant Butte Reservoir. The proposed contract would have a 25- to 40-year maximum term, which due to ongoing consultations with the U.S. Fish and Wildlife Service, has been executed and extended on an annual basis. The Act of December 29, 1981, Public Law 97–140, 95 Stat. 1717 provides authority to enter into this contract.

15. Contracts with various water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, Colorado, New Mexico, Texas, Utah, and Wyoming: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11 to be executed as project progresses.

16. Pine Glen, LLC, Mancos Project, Colorado: Pine Glen LLC has requested a new carriage contract to replace existing contract No. 14–06–400–4901, assignment No. 6. The new contract is the result of a property sale. Remaining interest in the existing assignment is for 0.56 cubic feet per second of nonproject water to be carried through Mancos Project facilities.

17. Voiles, Katherine Marie and William Thomas, Mancos Project, Colorado: Katherine Marie and William Thomas Voiles have requested a new carriage contract to replace existing contract No. 14–06–400–4901, assignment No. 2–A. The new contract is the result of a property sale. Remaining interest in the existing assignment is for 0.38 cubic feet per second of nonproject water to be carried through Mancos Project facilities.

18. Hanson, Brian E. and Joan M. Brake-Hanson, Mancos Project, Colorado: Brian E. Hanson and Joan M. Brake-Hanson have requested a new carriage contract to replace existing contract No. 14–06–400–4901, assignment No. 5. The new contract is the result of a property sale. Remaining interest in the existing assignment is for 0.12 cubic feet per second of nonproject water to be carried through Mancos Project facilities.

19. Animas-La Plata Project, Colorado-New Mexico: (a) Navajo Nation title transfer agreement for the Navajo Nation Municipal Pipeline for facilities and land outside the corporate boundaries of the City of Farmington, New Mexico; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554) and the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11); (b) City of Farmington, New Mexico, title transfer agreement for the Navajo Nation Municipal Pipeline for facilities and land inside the corporate boundaries of the City of Farmington; New Mexico, contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554) and the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11); and (c) Operations agreement among the United States, Navajo Nation, and City of Farmington for the Navajo Nation Municipal Pipeline pursuant to Public Law 111–11, Section 10605(b)(1) that sets forth any terms and conditions that secures an operations protocol for the M&I water supply.

20. El Paso County Water Improvement District No. 1 and Ysleta del Sur Pueblo, Rio Grande Project, Texas: Contract to convert up to 1,000 acre-feet of the Pueblo's project irrigation water to use for tradition and religious purposes.

21. Uintah Water Conservancy District, Vernal Unit, CUP, Utah: Proposed carriage contract to both store up to 35,000 acre-feet of nonproject water in Steinaker Reservoir and carry nonproject water in the Steinaker Service and Feeder Canals.

22. Uintah Water Conservancy District, Jensen Unit, CUP, Utah: Proposed carriage contract to both store up to 5,000 acre-feet of nonproject water in Red Fleet Reservoir and carry nonproject water in the project Canals.

23. Emery County Project, Utah: PacifiCorp Energy Corporation has requested renewal of its water service contract for 6,000 acre-feet of project M&I water from Joe's Valley Reservoir, Emery County Project.

24. Weber Basin Project, Utah: The North Summit Pressurized Irrigation Company has requested a carriage contract for up to 7,000 acre-feet of nonproject water through Wanship Dam and outlet works, Weber Basin Project. Negotiations are anticipated to begin shortly.

25. Jensen Unit, CUP, Utah: The Uintah Water Conservancy District has requested to renew a temporary water service contract with the United States for use of the 3,300 acre-feet of Jensen Unit M&I water during the 2013 water year.

26. Pinnacle Potash International, Flaming Gorge, CRSP, Utah: Pinnacle Potash International has requested a water service agreement for up to 20,000 acre feet of M&I water out of Flaming Gorge for potash mining at a place near Crescent Junction, Utah.

27. Navajo-Gallup Water Supply Project, New Mexico: Reclamation continues negotiations on an operations, maintenance and replacement transfer contract with the Navajo Tribal Utility Authority pursuant to Public Law 111–11, Section 10602(f) which transfers responsibilities to carry out the OM&R of transferred works of the Project; ensures the continuation of the intended benefits of the Project, distribution of water, and sets forth the allocation and payment of annual OM&R costs of the Project.

28. Florida Project, Colorado: The United States and the Florida Water Conservancy District, pursuant to Section 4 of the CRSP, and subsection 9(c)(2) of the Reclamation Projects Act of 1939, propose to negotiate and execute a water service contract for 2,500 acre-feet of Florida Project water for M&I and other miscellaneous beneficial uses, other than commercial agricultural irrigation, within the district boundaries in La Plata County, Colorado.

**Completed Contract Action**

1. Orchard Mesa Canal Automation Project, Orchard Mesa Division, Grand Valley Project, Colorado: Orchard Mesa ID has requested improvements to its delivery system. The major components of the current configuration of the improvements include a buffer reservoir, Supervisory Control and Data Acquisition system, pumping station, replacing the unlined portion of the Mutual Mesa Lateral with a pipeline and installing a booster pump, and enhancements to Canal Nos. 1 and 2. Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, particularly the Endangered Species Act 16 U.S.C. 1531, Section 2; Act of October 30, 2000 (Pub.

L. 106–392). Completed September 27, 2013.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59101, telephone 406–247–7752.

1. Irrigation, M&I, and miscellaneous water users; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Water service contracts for the sale, conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term of up to 1 year, or up to 1,000 acre-feet of water annually for a term of up to 40 years.

2. Water user entities responsible for payment of O&M costs for Reclamation projects in Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

3. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation and M&I; contracts for the sale of water from the marketable yield to water users within the Colorado River Basin of western Colorado.

4. Garrison Diversion Conservancy District, Garrison Diversion Unit, P–SMBP, North Dakota: Intent to modify long-term water service contract to add additional irrigated acres.

5. Fryingpan-Arkansas Project, Colorado: Consideration of excess capacity contracting in the Fryingpan-Arkansas Project.

6. Colorado-Big Thompson Project, Colorado: Consideration of excess capacity contracting in the Colorado-Big Thompson Project.

7. Municipal Subdistrict of the Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Consideration of a new long-term contract or amendment of contract No. 4–07–70–W0107 with the Municipal Subdistrict and the Northern Colorado Water Conservancy District for the proposed Windy Gap Firming Project.

8. Northern Integrated Supply Project, Colorado-Big Thompson Project, Colorado: Consideration of a new long-term contract with approximately 15 regional water suppliers and the Northern Colorado Water Conservancy District for the Northern Integrated Supply Project.

9. Exxon Mobil Corporation, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Consideration of Exxon Mobil Corporation's request to amend its Ruedi Round I contract to include additional uses for the water.

10. Colorado River Water Conservation District, Colorado-Big Thompson Project, Colorado: Long-term exchange, conveyance, and storage contract to implement the Exhibit B Agreement of the Settlement Agreement on Operating Procedures for Green Mountain Reservoir Concerning Operating Limitations and in Resolution of the Petition Filed August 7, 2003, in Case No. 49–CV–2782 (The United States v. Northern Colorado Water Conservancy District, et al., U.S. District Court for the District of Colorado, Case No. 2782 and Consolidated Case Nos. 5016 and 5017).

11. Roger W. Evans (Individual), Boysen Unit, P–SMBP, Wyoming: Renewal of long-term water service contract.

12. Busk-Ivanhoe, Inc., Fryingpan-Arkansas project, Colorado: Contract for long-term carriage and storage, and/or a new contract for an additional use of water.

13. State of Colorado, Department of Corrections, Fryingpan-Arkansas Project, Colorado: Consideration of a request for a long-term excess capacity storage contract in Pueblo Reservoir.

14. Southeastern Water Conservancy District, Fryingpan-Arkansas Project, Colorado: Consideration of an excess capacity master storage contract.

15. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Consideration of a request for a contract for municipal-recreational purposes.

16. State of Kansas Department of Wildlife and Parks, Glen Elder Unit, P–SMBP, Kansas: Intent to enter into a contract for the remaining conservation storage in Waconda Lake for recreation and fish and wildlife purposes.

17. Arkansas Valley Conduit, Fryingpan-Arkansas Project, Colorado: Consideration of a repayment contract for the Arkansas Valley Conduit.

18. Northern Colorado Water Conservancy District, Colorado Big Thompson Project, Colorado: Amend or supplement the 1938 repayment contract to include the transfer of OM&R for Carter Lake Dam Additional Outlet Works and Flatiron Power Plant Bypass facilities.

19. Jamestown Reservoir, Jamestown Unit, P–SMBP, North Dakota: Intent to enter into an individual long-term irrigation water service contract to provide up to 285 acre-feet of water annually for a term of up to 40 years from Jamestown Reservoir, North Dakota.

20. Donala Water and Sanitation District, Fryingpan-Arkansas Project, Colorado: Consideration of a long-term excess capacity contract.

21. Purgatoire Water Conservancy District, Trinidad Project, Colorado: Consideration of a request to amend the contract.

22. Grey Reef Ranch, LLC, Kendrick Project, Wyoming: Renewal of a long-term Warren Act contract.

23. Doug and Michelle Hamilton, Boysen Unit, P–SMBP, Wyoming: Renewal of a long-term water service contract.

24. Frank Robbins, Boysen Unit, P–SMBP, Wyoming: Renewal of a long-term water service contract.

25. Wade W. Jacobsen, Boysen Unit, P–SMBP, Wyoming: Renewal of a long-term water service contract.

26. Yellowtail Unit, P–SMBP, Montana: Negotiation of a water allocation agreement with the Crow Tribe for 300,000 acre-feet of storage in Bighorn Lake pursuant to the Crow Tribe Water Rights Settlement Act of 2010 (Pub. L. 111–291, enacted December 8, 2010).

27. Garrison Diversion Unit, P–SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Dakota Water Resources Act of 2000; negotiation of water service or repayment contracts with irrigators and M&I users.

28. Oil and Gas Industry Contractors; P–SMBP; North Dakota, South Dakota, Montana and Wyoming: Consideration of a form of contract for water service from P–SMBP reservoirs for industrial purposes.

29. Western Heart ID, Lower Heart Irrigation Company, and Individual Irrigators; Heart Butte Unit; P–SMBP; North Dakota: Consideration of a new or amended long-term irrigation water service or repayment contract and new or amended project-use power contract.

30. State of Colorado, Armel Unit, P–SMBP, Colorado: Consideration of a contract action to address future OM&R costs.

31. Central Oklahoma Master Conservancy District, Norman Project, Oklahoma: Amend existing contract No. 14–06–500–590 to execute a separate contract(s) to allow for importation and storage of nonproject water in accordance with the Lake Thunderbird Efficient Use Act of 2012.

32. Harlan County Dam and Reservoir, Bostwick Division, P–SMBP, Nebraska and Kansas: Consideration of a contract with Bostwick ID in Nebraska and Kansas-Bostwick ID No. 2 for repayment of extraordinary O&M at Harlan County Dam and Reservoir.

33. Altus Dam, W.C. Austin Project: Consideration of a contract for repayment of SOD costs.

34. Bull Lake Dam, Riverton Unit, P–SMBP: Consideration of a contract for repayment of SOD costs.

35. Twin Lakes Dam, Fryingpan-Arkansas Project: Consideration of a contract action for repayment of SOD costs.

36. John and Donna Vandenacre, Canyon Ferry Unit, P–SMBP, Montana. Consideration of a request to renew a long-term water service contract for up to 562.5 acre-feet of water from storage in Canyon Ferry Reservoir.

37. Helena Valley ID; Helena Valley Unit, P–SMBP; Montana: Consideration of a request for an amendment to the repayment contract to allow for delivery of up to 10,000 acre-feet of water for M&I purposes within the District boundaries.

38. Savage ID; Savage Unit, P–SMBP; Montana. Intent to renew the repayment contract to provide for a long-term-water supply to the District.

39. Nelson Dikes, Milk River Project: Consideration of a contract(s) for repayment of SOD costs.

39. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Amend existing contract place of use for some Round II contracts.

40. Mirage Flats ID; Mirage Flats Project: Consideration of a contract action for repayment of SOD costs.

41. Guernsey Dam, North Platte Project, Nebraska and Wyoming: O&M repayment contracts with North Platte Project contractors for the repayment of extraordinary maintenance associated with Guernsey Dam.

42. Republican River Basin, P–SMBP, Kansas/Nebraska: Consideration of a short-term contract(s) with the Kansas Bostwick ID for use of Reclamation facilities.

**Discontinued Contract Actions**

1. Cornwell Ranch, Milk River Project, Montana: Consideration of a request to enter into a new long-term Warren Act excess capacity contract for conveyance on nonproject water.

2. Pugsley Ranches, Inc., Lower Marias Unit, P–SMBP, Montana: Intent to enter into a water service contract for up to 144.2 acre-feet of water per year from storage in Lake Elwell.

**Completed Contract Actions**

1. Northern Colorado Water Conservancy District, Colorado Big Thompson Project, Colorado: Consideration of an amendment to describe the District's commitment to evaluate and address factors that are contributing to reduced clarity in Grand Lake. Completed October 23, 2013.

2. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Amend existing contract term for Round I and Round II contracts. Completed September through November 2013.

Dated: December 18, 2013.

**Roseann Gonzales,**

*Director, Policy and Administration.*

[FR Doc. 2014–03020 Filed 2–11–14; 8:45 am]

BILLING CODE 4310–MN–P

## INTERNATIONAL TRADE COMMISSION

### Submission for OMB Review; Comment Request

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of proposed collection; comment request.

**SUMMARY:** The proposed information collection is a 3-year extension, pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (the ''Act''), of the current generic survey clearance previously approved by the Office of Management and Budget (''OMB''). The clearance is used by the U.S. International Trade Commission (''Commission'') to issue information collections (specifically, producer, importer, purchaser, and foreign producer questionnaires and certain institution notices) for a series of import injury investigations that are required by the Tariff Act of 1930 and the Trade Act of 1974. The current generic survey clearance is assigned OMB control No. 3117–0016; it will expire on June 30, 2014. Comments concerning the proposed information collections are requested in accordance with section 3506(c)(2)(A) of the Act; such comments are described in greater detail in the section of this notice entitled **SUPPLEMENTARY INFORMATION**.

**DATES:** To be assured of consideration, written comments should be received no later than 60 days after publication of this notice in the **Federal Register**.

**ADDRESSES:** Signed comments should be submitted to Lisa Barton, Acting Secretary, U.S. International Trade Commission, 500 E St. SW., Washington, DC 20436.

**FOR FURTHER INFORMATION CONTACT:** Copies of the proposed collection of information and supporting documentation may be obtained from Jennifer Brinckhaus (USITC, tel. no. 202–205–3188). Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

Comments are solicited as to (1) whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) minimization of the burden of the proposed information collection on those who are to respond (including through the use of appropriate automated, electronic, mechanical, or other technological forms of information technology, e.g., permitting electronic submission of responses).

**Summary of the Proposed Information Collections**

*(1) Need for the Proposed Information Collections*

The information requested in questionnaires and five-year sunset review institution notices issued under the generic survey clearance is utilized by the Commission in the following statutory investigations: Antidumping duty, countervailing duty, escape clause, North American Free Trade Agreement (NAFTA) safeguard, market disruption, and interference with programs of the U.S. Department of Agriculture (USDA). The Commission's generic survey clearance to issue questionnaires will not apply to repetitive questionnaires such as those issued on a quarterly or annual basis or to other investigations and research studies conducted under section 332 of the Trade Act of 1974. The information provided by firms in response to the questionnaires provides the basis for the Commission's determinations in the above-cited statutory investigations. The submitted data are consolidated by Commission staff and provided to the Commission in the form of a staff report. In addition, in the majority of its investigations, the Commission releases completed questionnaires returned by industry participants to representatives of parties to its investigations under the terms of an administrative protective

order, the terms of which safeguard the confidentiality of any business proprietary or business confidential information. Representatives of interested parties also receive a confidential version of the staff report under the administrative protective order. Subsequent party submissions to the Commission during the investigative process are based, in large part, upon their review of the information collected. Included in the proposed generic clearance are the institution notices for the five-year sunset reviews of antidumping and countervailing duty orders and suspended investigations. Responses to the institution notices will be evaluated by the Commission and form much of the record for its determinations to conduct either expedited or full five-year sunset reviews of existing antidumping and countervailing duty orders.

*(2) Information Collection Plan*

Questionnaires for specific investigations are sent to all identified domestic producers manufacturing the product(s) in question. Importer and purchaser questionnaires are also sent to all substantial importers/purchasers of the product(s). Finally, all foreign manufacturers of the product(s) in question that are represented by counsel are sent questionnaires, and, in addition, the Commission attempts to contact any other foreign manufacturers, especially if they export the product(s) in question to the United States. Firms receiving questionnaires include businesses, farms, and/or other for-profit institutions; responses by domestic firms are mandatory. The institution notices for the five-year sunset reviews are published in the **Federal Register** and solicit comment from interested parties (i.e., U.S. producers within the industry in question as well as labor unions or representative groups of workers, U.S. importers and foreign exporters, and involved foreign country governments).

*(3) Description of the Information To Be Collected*

Although the content of each questionnaire will differ based on the needs of a particular investigation, questionnaires are based on long-established, generic formats. Producer questionnaires generally consist of the following four parts: (part I) General questions relating to the organization and activities of the firm; (part II) data on capacity, production, inventories, employment, and the quantity and value of the firm's shipments and purchases from various sources; (part III) financial data, including income-and-loss data on the product in question, data on asset valuation, research and development expenses, and capital expenditures; and (part IV) pricing and market factors. (Questionnaires may, on occasion, also contain part V, an abbreviated version of the above-listed parts, used for gathering data on additional product categories.) Importer questionnaires generally consist of three parts: (part I) General questions relating to the organization and activities of the firm; (part II) data on the firm's imports and the shipment and inventories of its imports; and (part III) pricing and market factors similar to that requested in the producer questionnaire. Purchaser questionnaires generally consist of five parts: (part I) General questions relating to the organization and activities of the firm; (part II) data concerning the purchases of the product by the firm; (part III) market characteristics and purchasing practices; (part IV) comparisons between imported and U.S.-produced product; and (part V) actual purchase prices for specific types of domestic and subject imported products and the names of the firm's vendors. Foreign producer questionnaires generally consist of (part I) general questions relating to the organization and activities of the firm; (part II) data concerning the firm's manufacturing operations; and may include (part III) market factors. The notices of institution for the five-year sunset reviews include 11 specific requests for information that firms are to provide if their response is to be considered by the Commission.

*(4) Estimated Burden of the Proposed Information Collection*

The Commission estimates that information collections issued under the requested generic clearance will impose an average annual burden of 173,094 burden hours on 4,929 respondents (i.e., recipients that provide a response to the Commission's questionnaires or the notices of institution of five-year sunset reviews). Table 1 lists the projected annual burden for each type of information collection for the July 2014–June 2017 period.

*(5) Minimization of Burden*

The Commission periodically reviews its investigative processes, including data collection, to reduce the information burden. Questionnaires clearly state that estimates are acceptable for certain items. They are designed in part with check-in type formats to simplify the response. The reporting burden for smaller firms is reduced in that the sections of the questionnaire that are applicable to their operations are typically more limited. Requests by parties to expand the data collection or add items to the questionnaire for specific investigations may not be accepted if the Commission believes such requests will increase the response burden while not substantially adding to the investigative record. Completed questionnaires have traditionally been returned to the Commission in paper form, however the Commission is promoting options for electronic submission. For example, the Commission provides the questionnaires on the Commission's Web site in a fillable Word format and has created a secure drop box which questionnaire respondents can use to securely upload completed questionnaires. The information provided in response to its notices of institution for the five-year sunset reviews is typically submitted in document form directly to the Office of the Secretary although it may be submitted to the Commission's Electronic Data Information System (EDIS) and Electronic Docket.

TABLE 1—PROJECTED ANNUAL BURDEN DATA, BY TYPE OF INFORMATION COLLECTION, JULY 2014–JUNE 2017

| Item | Producer questionnaires | Importer questionnaires | Purchaser questionnaires | Foreign producer questionnaires | Institution notices for 5-year reviews | Total |
|---|---|---|---|---|---|---|
| Number of respondents | 930 | 1,395 | 1,260 | 1,116 | 228 | 4,929 |
| Frequency of response | 1 | 1 | 1 | 1 | 1 | 1 |
| Total annual responses | 930 | 1,395 | 1,260 | 1,116 | 228 | 4,929 |
| Hours per response | 49 | 36 | 25 | 39 | 10 | 35.1 |
| Total hours | 45,570 | 50,220 | 31,500 | 43,524 | 2,280 | 173,094 |

No record keeping burden is known to result from the proposed collection of information.

By order of the Commission.

Issued: February 6, 2014.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2014–02955 Filed 2–11–14; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–872]**

### Certain Compact Fluorescent Reflector Lamps, Products Containing Same and Components Thereof; Notice of Request for Statements on the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the presiding administrative law judge (''ALJ'') has issued an Initial Determination and Recommended Determination on Remedy and Bonding in the above-captioned investigation. The ALJ recommends that the Commission issue a limited exclusion order against respondents Maxlite, Inc.; Satco, Products, Inc., and Litetronics International, Inc., with respect to U.S. Patent No. 7,053,540. The Commission is soliciting comments on public interest issues raised by the recommended relief. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

**FOR FURTHER INFORMATION CONTACT:** Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–5468. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease-and-desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Initial Determination and Recommended Determination on Remedy and Bonding issued in this investigation on February 3, 2014. Comments should address whether issuance of a limited exclusion order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended limited exclusion order are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended limited exclusion order;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended limited exclusion order within a commercially reasonable time; and

(v) explain how the recommended limited exclusion order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on March 7, 2014.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 872'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 6, 2014.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2014–02956 Filed 2–11–14; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

**[Docket No. OAG 146; AG Order No. 3418–2014]**

### Pilot Project for Tribal Jurisdiction Over Crimes of Domestic Violence—Announcement of Successful Applications

**AGENCY:** Office of the Associate Attorney General, Justice.

**ACTION:** Notice.

**SUMMARY:** The Associate Attorney General, exercising authority delegated by the Attorney General, is granting the requests of three Indian tribes to be

designated as participating tribes under section 204 of the Indian Civil Rights Act of 1968, as amended, on an accelerated basis, under the voluntary pilot project described in section 908(b)(2) of the Violence Against Women Reauthorization Act of 2013.

**DATES:** This notice is effective February 6, 2014.

**ADDRESSES:** Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW., Room 2310, Washington, DC 20530, email *OTJ@usdoj.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, at (202) 514–8812 (not a toll-free number) or *OTJ@usdoj.gov.*

**SUPPLEMENTARY INFORMATION:** Section 908(b)(2) of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) establishes a voluntary pilot project for Indian tribes that wish to commence exercising jurisdiction on an accelerated basis over certain crimes of domestic violence and dating violence and certain criminal violations of protection orders in Indian country. This announcement provides public notice that the Associate Attorney General, exercising authority delegated by the Attorney General, is granting the requests of three Indian tribes to be designated as participating tribes under section 204 of the Indian Civil Rights Act of 1968, as amended, on an accelerated basis, under the voluntary pilot project described in section 908(b)(2) of VAWA 2013. The three tribes are (in alphabetical order):

- The Confederated Tribes of the Umatilla Indian Reservation,
- The Pascua Yaqui Tribe of Arizona, and
- The Tulalip Tribes of Washington.

In deciding to grant the three tribes' requests, the Department of Justice followed the procedures described in the Department's final notice on the Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence, 78 FR 71645 (Nov. 29, 2013). The Department of Justice coordinated with the Department of the Interior, consulted with affected Indian tribes, and concluded that the criminal justice system of each of the three tribes has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304.

By February 20, 2014, each of the three tribes will notify its community that the tribe will soon commence prosecuting ''special domestic violence criminal jurisdiction'' (SDVCJ) cases. That notification will include sending press releases to the print and electronic media outlets in the tribe's area. Each of the three tribes may not exercise SDVCJ to prosecute any crime committed before that notification has been completed or before February 20, 2014. Also, during the remainder of the Pilot Project's duration (i.e., until March 7, 2015), each of the three tribes will provide the Department of Justice's Office of Tribal Justice (OTJ) with updated information if changes in the tribe's laws, rules, policies, or personnel render the answers to the tribe's certified Application Questionnaire incomplete, inaccurate, or outdated.

The Department of Justice will post on its Tribal Justice and Safety Web site (*http://www.justice.gov/tribal/*) each of the three tribes' Application Questionnaires and all the tribal laws, rules, and policies that were attached or linked to those Application Questionnaires. Once posted, these materials will serve as a resource for those tribes that may also wish to participate in the Pilot Project or to commence exercising SDVCJ in March 2015 or later, after the Pilot Project has concluded.

Dated: February 6, 2014.

**Tony West,**

*Associate Attorney General.*

[FR Doc. 2014–03023 Filed 2–11–14; 8:45 am]

BILLING CODE 4410–A5–P

## DEPARTMENT OF JUSTICE

### Foreign Claims Settlement Commission

**[F.C.S.C. Meeting and Hearing Notice No. 02–14]**

### Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Friday, February 21, 2014:

10:00 a.m.—Oral hearing on Objection to Commission's Proposed Decision in Claim No. IRQ–I–005;

11:00 a.m.—Issuance of Proposed Decisions in claims against Iraq.

*Status:* Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

**Brian M. Simkin,**

*Chief Counsel.*

[FR Doc. 2014–03145 Filed 2–10–14; 11:15 am]

BILLING CODE 4410–BA–P

## DEPARTMENT OF LABOR

### Presidential Memorandum of January 30, 2014; Job-Driven Training for Workers

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

On January 30, 2014, President Barack Obama issued a memorandum to the Secretary of Labor, the Secretary of Commerce, and the Secretary of Education, directing them to develop a specific action plan to make the workforce and training system more job-driven, integrated, and effective. This plan is to be provided to the President through the Vice President within 180 days of the date of this memorandum. The text of this memorandum reads —

Giving workers the opportunity to acquire the skills that they need to pursue in-demand jobs and careers is critical to growing our economy, ensuring that everyone who works hard is rewarded, and building a strong middle class. Despite recent employment growth, far too many hard-working individuals still have not been able to find a job or increase their earnings, and many businesses report difficulty hiring workers with the right skills for jobs that they want to fill.

It is critical that the Federal Government ensure that its policies and programs in the workforce and training system are designed to equip the Nation's workers with skills matching the needs of employers looking to hire. To achieve this goal, employers must identify the skills and credentials required for in-demand jobs and help develop training programs; workers and job seekers must have access to education and training that meets their unique needs and the requirements for good jobs and careers; and employers must have easy ways to find workers who have or can acquire those skills. We must take steps to ensure that all relevant Federal programs follow such a job-driven approach to training, and that these programs are accountable for getting Americans into good jobs and careers as quickly as possible. That is why I have asked the Vice President to lead a Government-wide review of relevant Federal programs.

Therefore, as part of the overall review process led by the Vice President, I hereby direct as follows:

*Section 1. Job-Driven Reform of Federal Employment and Training Programs.* (a) Within 180 days of the date of this memorandum and in coordination with the Office of the Vice President, the National Economic Council, the Domestic Policy Council, the Council of Economic Advisers, the Office of Science and Technology Policy, and the Office of Management and Budget, the Secretaries of Labor, Commerce, and Education (Secretaries), in consultation with other executive departments and agencies as appropriate, shall develop a specific action plan, to be provided to me through the Vice President, to make the workforce and training system more job-driven, integrated, and effective.

(b) The action plan shall identify concrete steps to make Federal workforce and training programs and policies more focused on imparting relevant skills with job-market value, more easily accessed by employers and job seekers, and more accountable for producing positive employment and earning outcomes for the people they serve. Such steps shall be consistent with the following job-driven training principles:

(i) Promoting more active engagement with industry, employers and employer associations, and worker representatives to identify the skills and supports workers need, and to make sure those skills are better communicated to education and training providers, workforce leaders, job seekers, and policy makers;

(ii) providing support for secondary and post-secondary education and training entities to equip individuals with the skills, competencies, and credentials necessary to help them obtain jobs, increase earnings, and advance their careers;

(iii) making available to workers, job seekers, and employers the best information regarding job demand, skills matching, supports, and education, training, and career options, as well as innovative approaches to training using learning science and advanced technology;

(iv) improving accountability for the outcomes of training programs, including employment and earnings outcomes;

(v) ensuring better alignment across secondary, post-secondary, and adult education, and workforce training, including coordinating Federal programs and promoting foundational skill development for employability, on-the-job training, and apprenticeship options; and

(vi) encouraging effective regional partnerships among industry, educators, worker representatives, nonprofits, and the workforce system to prepare, support, and train youth, unemployed workers, low-skilled employed adults, and others for career path employment and advancement.

(c) In developing the action plan, the Secretaries shall consult with industry, employers and employer associations, State and local leaders, economic development organizations, worker representatives, education and training providers, workforce leaders, and relevant nonprofit organizations.

(d) In developing the action plan, the Secretaries shall review existing evidence of the job training strategies that most effectively achieve the goals of this memorandum, determine what information is lacking, and identify future research and evaluation that can be undertaken to ensure that Federal programs invest in effective practices.

*Sec. 2. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:*

(i) The authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Labor is authorized and directed to publish this memorandum in the **Federal Register**.

Dated: February 6, 2014.

**Gerri Fiala,**

*Deputy Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2014–03062 Filed 2–11–14; 8:45 am]

BILLING CODE 4510–XX–P

## DEPARTMENT OF LABOR

### Office of the Secretary

### Privacy Act of 1974; Publication of Five New Systems of Records; Amendments to Nine Existing Systems of Records

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Notice of five new systems of records; amendments to nine existing systems of records; decommissioning of five existing systems of records.

**SUMMARY:** The Privacy Act of 1974 requires that each agency publish notice of all of the systems of records that it maintains. This document proposes to add five new systems of records to the current systems of records of the Department of Labor (Department or DOL). With the addition of these five systems of records, and the decommissioning of five existing systems, the Department will maintain 153 systems of records. The Department also proposes to amend nine existing systems of records. The nine proposed revised systems of records include changes to their routine uses and to the various system categories, some of which are updates to names, locations and stylistic changes. Major changes are summarized in the introductory portion of the Supplementary Information section. DOL also proposes to decommission five existing outdated systems of records.

**DATES:** Persons wishing to comment on the changes set out in this notice may do so on or before March 24, 2014.

*Effective Date:* Unless there is a further notice in the **Federal Register**, these five new systems of records and nine amended systems of records and the decommissioning of five existing systems of records will become effective on April 8, 2014.

**FOR FURTHER INFORMATION CONTACT:** Joseph J. Plick, Counsel for FOIA and Information Law, Office of the Solicitor, Department of Labor, 200 Constitution Avenue NW., Room N–2420, Washington, DC 20210, telephone (202) 693–5527, or by email to *plick.joseph@dol.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), hereinafter referred to as the Act, the Department hereby publishes notice of updates to its systems of records. On April 8, 2002, in Volume 67 at Page 16816 of the **Federal Register**, the Department published a notice of 147 systems of records maintained under the Act. In February 2003, a new system of records was published on behalf of the Office of the 21st Century

Workforce, entitled DOL/21st CENTURY–1, *Correspondents with the Office of the 21st Century Workforce,* which appeared at 68 FR 6185 (February 6, 2003). Additionally, in September 2003, the Department amended two existing systems of records, which appear at 68 FR 54012 (September 15, 2003). On January 11, 2012, the Department published five new and five amended systems of records, which appear at 77 FR 1728 (January 11, 2012).

This current document presents five new systems of records, amends nine systems of records, and proposes decommissioning of five systems of records, bringing the Department's total number of systems of records to 153. This notice first provides a summary of the five new, nine amended systems of records, and five proposed decommissioned systems of records, and then provides the Universal Routine Uses applicable to all systems of records, followed by the text of each of the new and amended systems of records.

1. The first new system is entitled DOL/ADJBDS–1, *DOL Appeals Management System (AMS)* (see Notice of Changes to Systems of Records, Section I below). This system contains information maintained by the Department concerning parties involved in appeals proceedings before the Administrative Review Board (ARB), Benefits Review Board (BRB), and Employees' Compensations Appeals Board (ECAB), collectively referred to as ''the Boards.'' As part of a long-term initiative to modernize their management information systems, the Boards have undertaken and completed a consolidation of four legacy computer systems into the DOL Appeals Management System (AMS). AMS now processes and stores the information previously contained in the following legacy systems:

a. DOL/ARB–1, *Administrative Review Board Appeals files.*

b. DOL/BRB–1, *Appeals Benefits Review Board.*

c. DOL/ECAB–1, *Employees' Compensation Appeals Board Docket Records.*

d. DOL/ECAB–2, *Employees' Compensation Appeals Board Deposition Records.*

2. The second new system is entitled DOL/BLS–21, *Data Sharing Agreements Database (DSA)* (see Notice of Changes to Systems of Records, Section II below). This system contains information maintained by the Department's Bureau of Labor Statistics (BLS) concerning individuals who have been granted access to non-public information in data files maintained by BLS, and who have signed confidentiality agreements under the Confidential Information Protection and Statistical Efficiency Act (CIPSEA).

3. The third new system is entitled DOL/CENTRAL–4, *Department of Labor Advisory Committees Members Files* (see Notice of Changes to System of Records, Section III below). The duties of the Committee Management Officer, previously located in the Office of Small Business Programs (OSPB), have been re-assigned to the Office of the Secretary. Therefore, the system of records titled DOL/OSBP–2, Department of Labor Advisory Committees Members Files, is proposed to be decommissioned. DOL/CENTRAL–4, Department of Labor Advisory Committees Members Files will include the contents of the decommissioned DOL/OSBP–2 system.

4. The fourth new system is entitled DOL/OMBUDSMAN–1, *Office of the Ombudsman for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) File* (see Notice of Changes to System of Records, Section IV below). This system contains records of contacts with and correspondence between individuals who are interested in obtaining information concerning their potential entitlement under Parts B and E of the EEOICPA.

5. The fifth new system is entitled DOL/VETS–4, *VETS Employee Conduct Investigations* (see Notice of Changes to System of Records, Section V below). This system contains records of investigations into allegations of employee misconduct within the Veterans' Employment and Training Service (VETS).

6. In the first proposed amendment to a system of records (see Notice of Changes to Systems of Record, Section VI below), the Department proposes to amend DOL/OASAM–12, *Administrative Grievance Records,* to add the phrase ''settlement agreements'' to the section titled ''Categories of records in the system.'' In addition, system location and several other categories are proposed to be refined.

7. In the second proposed amendment to a system of records (see Notice of Changes to Systems of Records, Section VII below), the Department proposes to amend DOL/OASAM–17, *Equal Employment Opportunity Complaint Files,* to clarify the ''System location'' sections. In addition, several other categories are proposed to be refined.

8. In the third proposed amendment to a system of records (see Notice of Changes to Systems of Records, Section VIII below), the Department proposes to amend DOL/OASAM–19, *Negotiated Grievance Procedure and Unfair Labor Practice Files,* to clarify the ''System location'' sections. In addition, several other categories are proposed to be refined.

9. In the fourth proposed amendment to a system of records (see Notice of Changes to Systems of Records, Section IX below), the Department proposes to amend DOL/OASAM–22, *Civil Rights Center Discrimination Complaint Files,* to clarify the ''System location'' sections. In addition, several other categories are proposed to be refined.

10. In the fifth proposed amendment to a system of records (see Notice of Changes to Systems of Records, Section X below), the Department proposes to amend DOL/OCFO–2, *New Core Financial Management System (NCFMS),* by updating the system name. In addition, several other categories are proposed to be refined.

11. In the sixth proposed amendment to a system of records (see Notice of Changes to Systems of Records, Section XI below), the Department proposes to amend DOL/ODEP–2, *Workforce Recruitment Program for College Students with Disabilities (WRP) Database,* by updating the system name; storage, retention and disposal of records information; and the categories of records contained in the system. In addition, several other categories are proposed to be refined.

12. In the seventh proposed amendment to a system of records (see Notice of Changes to Systems of Records, Section XII below), the Department proposes to amend DOL/OALJ–2, *Office of Administrative Law Judges Case Files,* by revising the statement of Authority for maintenance of the system.

13. In the eighth proposed amendment to a system of records (see Notice of Changes to Systems of Records, Section XIII below), the Department proposes to amend DOL/OSHA–6, *Program Activity File,* by updating the system location, the categories of individuals covered by the system, and the records contained in the system. In addition, several other categories are proposed to be refined.

14. In the ninth proposed amendment to a system of records (see Notice of Changes to Systems of Records, Section XIV below), the Department proposes to amend DOL/SOL–15, *Solicitor's Office Litigation Files,* to add the phrase ''settlement agreements'' to the section titled ''Categories of records in the system,'' and to clarify the ''System location'' section. In addition, several other categories are proposed to be refined.

15. The Department proposes to decommission five legacy systems of

records (See Notice of Changes to Systems of Records, Section XV below). The first four decommissioned systems are entitled DOL/ARB–1, *Administrative Review Board Appeals files;* DOL/BRB–1, *Appeals Benefits Review Board;* DOL/ECAB–1, *Employees' Compensation Appeals Board Docket Records;* and DOL/ECAB–2, *Employees' Compensation Appeals Board Deposition.* The proposed decommissioned systems of records are being consolidated into a new systems of records as discussed in Paragraph 1 above. The Department also proposes to decommission a fifth system of records entitled DOL/OSBP–2, *Department of Labor Advisory Committees Members Files.* The proposed decommissioned systems of records is being eliminated as discussed in Paragraph 3 above.

The public, the Office of Management and Budget (OMB) and Congress are invited to submit written comments on the five new systems, the proposed amendments to nine existing systems, and the proposed decommissioning of five existing systems. A report on the five new systems and the proposed amendments to nine existing systems and proposed decommissioning of five existing systems has been provided to OMB and the Congress as required by OMB Circular A–130, Revised, and 5 U.S.C. 552a(r).

In its April 8, 2002, publication, the Department gave notice of 12 routine uses that apply to all of its systems of records, except for DOL/OASAM–5, DOL/OASAM–7, and DOL/CENTRAL–3. These 12 routine uses were presented in the General Prefatory Statement for that document, and appeared at Page 16825 of Volume 67 of the **Federal Register**. At this time, as a convenience to the reader of this document, we are republishing this General Prefatory Statement. This republication shall include the statement, also contained in the 2002 and 2011 publications, that pursuant to the Flexiplace Program (also known as ''telework'' consistent with the Telework Enforcement Act), the system location for all systems of records may be temporarily located at alternate worksites, including remote locations, employees' homes, or at geographically convenient satellite offices for part of the workweek.

**Thomas E. Perez,**

*Secretary of Labor.*

## General Prefatory Statement

### *A. Universal Routine Uses of the Records*

The following routine uses of the records apply to and are incorporated by reference into each system of records published below unless the text of a particular notice of a system of records indicates otherwise. These routine uses *do not* apply to DOL/OASAM–5, *Rehabilitation and Counseling File;* DOL/OASAM–7, *Employee Medical Records,* and DOL/CENTRAL–3, *Internal Investigations of Harassing Conduct.*

1. To disclose the records to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which the agency collected the records.

2. To disclose the records in a proceeding before a court or adjudicative body, when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

3. When a record on its face, or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the agency determines by careful review that the records or information are both relevant and necessary to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity, and that the use of such records or information is for a purpose that is compatible with the purposes for which the agency collected the records.

4. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

5. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted pursuant to 44 U.S.C. 2904 and 2906.

6. To disclose to contractors, employees of contractors, consultants, grantees, and volunteers who have been engaged to assist the agency in the performance of or working on a contract, service, grant, cooperative agreement or other activity or service for the Federal Government.

**Note:** Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a; *see also* 5 U.S.C. 552a(m).

7. To the parent locator service of the Department of Health and Human Services or to other authorized persons defined by Public Law 93–647 (42 U.S.C. 653(c)) the name and current address of an individual for the purpose of locating a parent who is not paying required child support.

8. To any source from which information is requested in the course of a law enforcement or grievance investigation, or in the course of an investigation concerning retention of an employee or other personnel action, the retention of a security clearance, the letting of a contract, the retention of a grant, or the retention of any other benefit, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

9. To a Federal, State, local, foreign, tribal, or other public authority of the fact that this system of records contains information relevant to the hiring or retention of an employee, the granting or retention of a security clearance, the letting of a contract, a suspension or debarment determination or the issuance or retention of a license, grant, or other benefit.

10. To the Office of Management and Budget during the coordination and clearance process in connection with legislative matters.

11. To the Department of the Treasury, and a debt collection agency with which the United States has contracted for collection services, to recover debts owed to the United States.

12. To the news media and the public when (1) the matter under investigation has become public knowledge, (2) the Solicitor of Labor determines that disclosure is necessary to preserve confidence in the integrity of the Department or is necessary to

demonstrate the accountability of the Department's officers, employees, or individuals covered by this system, or (3) the Solicitor of Labor determines that there exists a legitimate public interest in the disclosure of the information, provided the Solicitor of Labor determines in any of these situations that the public interest in disclosure of specific information in the context of a particular case outweighs the resulting invasion of personal privacy.

*B. System Location—Flexiplace Programs*

The following paragraph applies to and is incorporated by reference into all of the Department's systems of records under the Privacy Act, within the category entitled, SYSTEM LOCATION:

Pursuant to the Department of Labor's Flexiplace Programs (also known as ''telework'' pursuant to the Telework Enhancement Act), copies of records may be temporarily located at alternative worksites, including employees' homes or at geographically convenient satellite offices for part of the workweek. All appropriate safeguards will be taken at these sites.

*C. Notice of Changes to Systems of Records*

## I. PUBLICATION OF A FIRST NEW SYSTEM OF RECORDS

### DOL/ADJBDS–1

#### SYSTEM NAMES:

DOL Appeals Management System (AMS)

#### SECURITY CLASSIFICATION:

None.

#### SYSTEM LOCATION:

Offices of the Boards and their Information Technology (IT) service provider(s).

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Parties involved in appeals proceedings before the Administrative Review Board (ARB), Benefits Review Board (BRB), and Employees' Compensation Appeals Board (ECAB), collectively referred to as the Boards.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain information assembled in case files pertaining to appeals to the Boards with respect to claims of employees for benefits under various statutes and programs.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Freedom of Information Act (5 U.S.C. 552); Privacy Act of 1974 (5 U.S.C. 552a); 30 U.S.C. 901–62 (1982); 33 U.S.C. 901–50 (1982); 42 U.S.C. 1651–54 (1982); 36 DC Code 501–04 (1973); 5 U.S.C. 8171–73 (1982); 42 U.S.C. 1701–17 (1982); Surface Transportation Assistance Act, 49 U.S.C. 31105; 29 CFR part 1978; Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851 (1988); Clean Air Act, 42 U.S.C. 7622 (1988); Water Pollution Control Act, 33 U.S.C. 1367 (1988); Solid Waste Disposal Act, 42 U.S.C. 6971(a) (1988); Safe Drinking Water Act, 42 U.S.C. 300j–9 (1988); Toxic Substances Control Act, 15 U.S.C. 2622 (1988); Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9610 (1988); Comprehensive Employment and Training Act, as amended, 29 U.S.C. 801 (Supp. V 1981); Job Training Partnership Act, 29 U.S.C. 1576; 20 CFR part 627; Workforce Investment Act of 1998, 29 U.S.C. 2801 *et seq.,* Davis-Bacon Act, 40 U.S.C. 276a (1994); McNamara-O'Hara Service Contract Act of 1965, as amended; Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1813(b), 1853(b) (1988); Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 907(j) (1988); Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 38; 41 CFR part 50–203; Age Discrimination Act of 1975, 42 U.S.C. 6101–6107 (1988); Title VI of the Civil Rights Act of 1964; Contract Work Hours and Safety Standards Act, 40 U.S.C. 327 et seq.; 29 CFR part 6; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681–1686 (1988); Employee Polygraph Protection Act of 1988, 29 U.S.C. 2001–2009 (1988); Equal Access to Justice Act, 5 U.S.C. 504 (1988); Executive Order No. 11,246, as amended, 3 CFR 339 (1964–1965 Comp.) reprinted in 42 U.S.C. 2000e app.; Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 203(m) and (t), 211(d), 214(c) (1988); Federal Unemployment Tax Act, 26 U.S.C. 3304; Immigration Reform and Control Act of 1986, 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), 1188 (1988); National Apprenticeship Act, 29 U.S.C. 50 (1988); Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812 (1988); Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793, 794 (1988); Social Security Act, 42 U.S.C. 503 (Supp. V 1987); Single Audit Act of 1984, 31 U.S.C. 7501–7507 (1988); Trade Act of 1974, as amended, 26 U.S.C. 3302; Vietnam Era Veterans Readjustment Assistance Act, as amended, 38 U.S.C. 4212 (1988); and any laws enacted after May 3, 1996, which by statute, law or regulation provide for final decisions by the Secretary of Labor upon appeal or review of decisions or recommended decisions of ALJs; 5 U.S.C. 8101 et seq.

#### PURPOSE:

Records are maintained for use in adjudication of appeals.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those universal routine uses listed in the General Prefatory Statement to this document, disclosure outside the Department of Labor may be made to federal courts. The Boards decisions are sent to commercial publishing companies for publication, and are also placed on the respective Board's Internet Web site.

#### DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

#### STORAGE:

Files are stored electronically and/or on paper.

#### RETRIEVABILITY:

Records are retrieved by the Boards' docket number, Office of Administrative Law Judges (OALJ) number, Office of Workers' Compensation Programs (OWCP) number and claimant's name.

#### SAFEGUARDS:

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

#### RETENTION AND DISPOSAL:

The Board retains the case file until it renders a decision on the appeal. The case file is then returned to the appropriate lower, adjudicatory entity (*e.g.,* the OWCP or OALJ). Copies of the appeal decision are retained permanently.

#### SYSTEM MANAGER(S) AND ADDRESS:

Clerk of the Board, Benefits Review Board, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

#### NOTIFICATION PROCEDURE:

Individuals requesting information pertaining to them should send a written and signed request to the System Manager.

#### RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing and be signed by the requester.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager.

RECORD SOURCE CATEGORIES:

Records in the system include information submitted by claimants, employers, carriers, and other persons involved in appeals proceedings, as well as by the Government.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

## II. PUBLICATION OF A SECOND NEW SYSTEM OF RECORDS

## DOL/BLS–21

SYSTEM NAME:

Data Sharing Agreements Database (DSA).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Offices of the Bureau of Labor Statistics (BLS).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants and recipients of BLS data sharing agreements who are granted access to non-public BLS data files. Individuals may be federal employees or private individuals designated as ''agents'' under the Confidential Information Protection and Statistical Efficiency Act (CIPSEA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include individuals' names, addresses, telephone numbers, email addresses, organizational affiliation, project title, and project description. The records also include the name, addresses, telephone numbers, and email addresses of the signing official for the agreement at the individual's organization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To assure that appropriate records on data sharing agreements are maintained and are available for official use.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None, except for those universal routine uses listed in the General Prefatory Statement to this document.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are stored electronically and/or on paper.

RETRIEVABILITY:

Files are retrieved by individual's name.

SAFEGUARDS:

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

RETENTION AND DISPOSAL:

Records are retained for 5 years after agreement has become inactive (i.e. expired), in accordance with BLS Records Schedule N1–257–88–1, Item 216.

SYSTEM MANAGER(S) AND ADDRESS:

Data Sharing Agreement Coordinator, Division of Management Systems, Office of Administration, Bureau of Labor Statistics, Postal Square Building, 2 Massachusetts Avenue NE., Washington DC, 20210.

NOTIFICATION PROCEDURE:

Inquiries should be mailed to the System Manager.

RECORD ACCESS PROCEDURES:

A request for access should be mailed to the System Manager.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be mailed to the System Manager.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from applicants and recipients of BLS data sharing agreements who request and/or are granted access to non-public BLS data files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

## III. PUBLICATION OF A THIRD NEW SYSTEM OF RECORDS

## DOL/CENTRAL–4

SYSTEM NAME:

Department of Labor Advisory Committees Members Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Offices in the various components within the U.S. Department of Labor that sponsor DOL Advisory Committees, at the Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210, or other Department offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former members of advisory committees established by the Department, and candidates for a position on an advisory committee.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contained in this system are biographical information of individuals submitted by them because they are or have been members, or are being considered for membership on the committees. The records also include the biographical information regarding individuals who have been nominated for membership on advisory committees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The records are used to ensure that all appropriate personal records of advisory committee members, and nominees, are retained and are available for official use.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those universal routine uses listed in the General Prefatory Statement to this document, information in these records may be disclosed to the General Services Administration when necessary to comply with the Federal Advisory Committee Act.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are stored electronically and/or on paper.

RETRIEVABILITY:

Records are retrieved by member name, nominee name, committee name, or via identification number if electronically maintained.

SAFEGUARDS:

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

RETENTION AND DISPOSAL:

After a committee is terminated, its records are transferred to the National Archives and Records Administration for permanent retention.

**SYSTEM MANAGER(S) AND ADDRESS:**

The relevant agency head for the applicable component agency within the U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210.

**NOTIFICATION PROCEDURE:**

Individuals wishing to inquire whether this system of records contains information about them should send a written request to the System Manager. The written request must include the individual's full name, mailing address, and signature in order to allow the agency to locate and identify the records.

**RECORD ACCESS PROCEDURES:**

A request for access should be sent to the System Manager as indicated in the Notification Procedure Section. The request should also include the name of the Committee.

**CONTESTING RECORD PROCEDURES:**

A petition for amendment shall be addressed to the System Manager as indicated in the Notification Procedure Section.

**RECORD SOURCE CATEGORIES:**

Information contained in this system relates to individual members of the committee and those persons making nominations to the committee.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

## IV. PUBLICATION OF A FOURTH NEW SYSTEM OF RECORDS

## DOL/OMBUDSMAN–1

**SYSTEM NAME:**

Office of the Ombudsman for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) File.

**SECURITY CLASSIFICATION:**

Most files and data are unclassified. Files and data in certain cases may have Top Secret classification and the rules concerning their maintenance and disclosure are determined by the agency that has given the information the security classification of Top Secret.

**SYSTEM LOCATION:**

U.S. Department of Labor, Office of the Ombudsman for the Energy Employees Occupational Illness Compensation Program Act, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals or their survivors who are seeking benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). These individuals include, but are not limited to, employees or survivors of employees of Department of Energy contractors and subcontractors, and certain uranium workers or survivors of those workers as described under Section 5 of the Radiation Employees Compensation Act (RECA).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system may contain the following kinds of records: Correspondence between the Office of the Ombudsman and claimants, potential claimants, and/or survivors of such individuals or correspondence between the Office of the Ombudsman and the program agency regarding those individuals' EEOICPA claims; logs recording and detailing communications between claimants, potential claimants, and/or survivors of such individuals and the Office of the Ombudsman; claim forms filed by or on behalf of injured individuals or their survivors seeking benefits under the EEOICPA; reports by the employee and/or the United States Department of Energy; employment records; exposure records; safety records or other incident reports; dose reconstruction records; workers' or family members' contemporaneous diaries, journals, or other notes; forms authorizing medical care and treatment; other medical records and reports; bills and other payment records; compensation payment records; formal orders for or against the payment of benefits; transcripts of hearings conducted; and any other medical, employment, or personal information submitted or gathered in connection with the claim or complaint.

The system may also contain information relating to dates of birth, marriage, divorce, and death; notes (written or typed in email or other correspondence) of telephone conversations conducted in connection with the claim or complaint; information relating to vocational and/or medical rehabilitation plans and progress reports; records relating to court proceedings, insurance, banking and employment; articles from newspapers and other publications; information relating to other benefits (financial and otherwise) that the employee and/or survivor may be entitled to, including previously filed claims; and information received from various investigative agencies concerning possible violations of civil or criminal laws.

The system may also contain consumer credit reports on individuals indebted to the United States including information relating to the debtor's assets, liabilities, income and expenses, personal financial statements, correspondence to and from the debtor, and information relating to the location of the debtor. In addition, the system may contain other records and reports relating to the implementation of the Federal Claims Collection Act (as amended), including investigative reports or administrative review matters. Individual records listed here are included in a claim file only insofar as they may be pertinent or applicable to the individual claiming benefits.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Energy Employees Occupational Illness Compensation Program Act of 2000, Title XXXVI of Public Law 106–398, as amended by Public Law 108–375, 3161 (October 28, 2004), 42 U.S.C. 7385s–15.

**PURPOSE(S):**

To fulfill the duties of the Ombudsman under the EEOICPA as specified by Congress. The EEOICPA establishes a program for compensating certain individuals for covered illnesses related to exposure to toxic substances. These records are necessary to provide information to the public regarding the benefits available under the EEOICPA and the procedures attendant to those benefits, as well as to prepare the Congressionally mandated Report to Congress detailing the complaints and concerns received in the Office of the Ombudsman concerning that program.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

In addition to the universal routine uses listed in the General Prefatory Statement to this document, the Ombudsman may disclose relevant and necessary information to the Department of Labor's Office of Workers' Compensation Program (OWCP); the Department of Health and Human Services' National Institute for Occupational Safety and Health (NIOSH); and/or the Department of Energy's Office of Health and Safety in order for the Ombudsman to respond to inquiries made by claimants, potential claimants, and/or survivors of such individuals regarding those individuals' EEOICPA claims, to the extent necessary to identify the individual and inform the source of the purpose(s) of the request.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

The amount, status and history of overdue debts; the name and address, taxpayer identification (SSN), and other information necessary to establish the identity of a debtor; and the agency and program under which the claim arose may be disclosed pursuant to 5 U.S.C. 552a(b)(12) to consumer reporting agencies as defined by section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or in accordance with section 3(d)(4)(A)(ii) of the Federal Claims Collection Act of 1966 as amended (31 U.S.C. 3711(f)) for the purpose of encouraging the repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are stored electronically and/or on paper.

RETRIEVABILITY:

By name, employer, contractor, date, or nature of injury.

SAFEGUARDS:

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

RETENTION AND DISPOSAL:

All case files and automated data pertaining to a claim are destroyed 15 years after the case file has become inactive. Paper records that have been scanned to create electronic records are destroyed after the electronic records are verified. Automated data is retained in its most current form only, and as information is updated, outdated information is deleted. Electronic records are destroyed six years and three months after creation or receipt.

SYSTEM MANAGER(S) AND ADDRESS:

Ombudsman, Energy Employees Occupational Illness Compensation Program Act, 200 Constitution Avenue NW., Suite N–2454, Washington, DC 20210.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them may write or telephone the Office of the Ombudsman. In order for the record to be located, the individual must provide his or her full name, claim number (if known), and date of injury (if known).

RECORD ACCESS PROCEDURES:

Any individual seeking access to non-exempt information about a claim in which he/she is a party in interest may write or telephone the Office of the Ombudsman.

CONTESTING RECORD PROCEDURES:

Any individual requesting amendment of non-exempt records should contact the Office of the Ombudsman. Individuals requesting amendment of records must comply with the Department's Privacy Act regulations at 29 CFR 71.1 and 71.9.

RECORD SOURCE CATEGORIES:

Claimants who are the subject of the record and their family members; employers; current and former Federal contractors and subcontractors and their family members; State governments, State agencies, and other Federal agencies; State and Federal workers' compensation offices; physicians and other medical professionals; hospitals; clinics; medical laboratories; suppliers of health care products and services and their agents and representatives; educational institutions; attorneys; Members of Congress; EEOICPA investigations; consumer credit reports; investigative reports; correspondence with the debtor including personal financial statements; records relating to hearings on the debt; and other Department systems of records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In accordance with 5 U.S.C. 552a(k)(2), investigative material in this system of records compiled for law enforcement purposes is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence.

## V. PUBLICATION OF A FIFTH NEW SYSTEM OF RECORDS

### DOL/VETS—4

SYSTEM NAME:

VETS Employee Conduct Investigations.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The Veterans' Employment and Training Service National and Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

VETS employee(s) who are the subject of conduct investigations and/or against whom an allegation of misconduct, illegal act, conflict of interest, etc., has been made.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contained in this system are the name, organization, and other information relating to the investigated employee; investigative report(s); interview statements; and other data gathered during the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 7301, and Executive Order 11222.

PURPOSE(S):

To investigate allegations of employee misconduct and ensure that appropriate records of alleged misconduct, illegal acts, conflicts of interest, etc., are established and maintained to document agency actions taken in each case.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None, except for the General Prefatory Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are stored electronically and/or on paper.

RETRIEVABILITY:

The manual case files are indexed by name and case number. Computerized records are retrieved by case number, case name, or subject.

SAFEGUARDS:

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

RETENTION AND DISPOSAL:

General Record Schedule (GRS.01.18a)—Review annually and destroy superseded or obsolete documents, or destroy file relating to an

employee within 1 year after separation or transfer. Records will be retained and disposed of, in accordance with appropriate Federal laws, policies, regulations and guidelines governing the retention and disposal of agency records.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Agency Management and Budget, Veterans' Employment and Training Service, 200 Constitution Avenue NW., Washington, DC 20210; and the Regional Administrator or Deputy Regional Administrator in the Veterans' Employment and Training Service regional offices (identified at *http://www.dol.gov/vets/aboutvets/contacts/main.htm#reg3*).

**NOTIFICATION PROCEDURE:**

Inquiries concerning this system can be directed to the System Manager or to the appropriate Regional Administrator or Deputy Regional Administrator. Such inquiries should include full name, agency, organization, and office component of the requester.

**RECORD ACCESS PROCEDURES:**

Individuals may request access to their records by mailing a request to the appropriate System Manager. Such inquiries should include full name, agency, organization, and office component of the requester.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking to contest or amend information maintained in this system should direct their written request, containing the data elements listed above, to the appropriate System Manager. The request to amend should state clearly and concisely what information is being contested, the reasons for contesting, and the proposed amendment to the information.

**RECORD SOURCE CATEGORIES:**

Individuals; hotline complaints through the Office of the Inspector General's hotline; hotline complaints through the Government Accountability Office's hotline systems; incident reports submitted by employees; investigative reports; and interviews.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

In accordance with 5 U.S.C. 552a(k)(2), investigatory material in this system of records compiled for law enforcement purposes is exempt from subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) of 5 U.S.C. 552a, provided however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence.

## VI. PUBLICATION OF A FIRST PROPOSED AMENDED SYSTEM OF RECORDS

### DOL/OASAM—12

**SYSTEM NAME:**

Administrative Grievance Records.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

a. Human Resources Center, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; and national and regional personnel offices;

b. Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; and regional offices of the Solicitor.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current or former Department employees who have filed grievances under the Department's administrative grievance procedures in accordance with 5 CFR Part 771 and the Department's implementing regulation.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains records relating to grievances filed by Department employees under administrative grievance procedures and in accordance with 5 CFR part 771 and the Department's implementing regulation. These case files contain all documents related to interviews and hearings, fact-finder's findings and recommendations, a copy of the original decision, and related correspondence and exhibits, including settlement agreements. This system does not include files and records of any grievance filed under negotiated procedures with recognized labor organizations.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 CFR Part 771.

**PURPOSE(S):**

The records are used to process grievances submitted by employees for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to the universal routine uses listed in the General Prefatory Statement to this document, the Department may disclose relevant and necessary data as follows:

a. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

b. To disclose information to officials of the Merit System Protection Board or the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Department rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions as may be authorized by law.

c. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices or examination of affirmative employment programs.

d. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Files are stored electronically and/or paper.

**RETRIEVABILITY:**

Records are retrieved by the names of the individuals on whom they are maintained.

**SAFEGUARDS:**

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

**RETENTION AND DISPOSAL:**

Records are destroyed no sooner than 4 years but no later than 7 years after case is closed. (N1 GRS 92–1 item 30a).

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Human Resources Policy and Strategic Planning, Human Resources Center, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

**NOTIFICATION PROCEDURE:**

Individuals submitting grievances should already be provided with a copy of the record under the grievance process. They may, however, contact the personnel office where the action was processed, regarding the existence of such records about them. Such individuals must furnish the following information for their records to be located and identified:

a. Name;

b. approximate date of closing of the case and kind of action taken; and

c. organizational component involved.

**RECORDS ACCESS PROCEDURES:**

A petition request for access may be addressed to the System manager. The request must be in writing, signed by the requester and must demonstrate a prevailing need.

**CONTESTING RECORD PROCEDURES:**

A petition for amendment shall be addressed to the System Manager.

**RECORD SOURCE CATEGORIES:**

Information in this system of records is provided by the following:

a. The individual on whom the records are maintained;

b. testimony of witnesses;

c. investigative and other employment records;

d. decisions by agency officials.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

## VII. PUBLICATION OF A SECOND PROPOSED AMENDED SYSTEM OF RECORDS

### DOL/OASAM–17

**SYSTEM NAME:**

Equal Employment Opportunity Complaint Files.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

a. Civil Rights Center, OASAM, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210;

b. Office of the Solicitor, Washington, DC; and regional offices of the Solicitor;

c. Agency Equal Employment Opportunity (EEO) Managers, Washington, DC and regional offices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals, classes of individuals, or representatives designated to act on behalf of Department employees, former employees, or applicants for employment who have consulted with an Equal Employment Opportunity (EEO) counselor and/or who have filed a formal complaint alleging discrimination on the basis of race, color, religion, sex (including gender identity and pregnancy), national origin, disability, age, genetic information, sexual orientation, parental status and/or any basis covered by Executive Order 11478, because of a determination, decision, action, or non-action administered against them by a departmental official, as well as individuals alleging reprisal for having previously participated in EEO activity.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records include information and/or documents pertaining to pre-complaint processing, informal resolutions, formal complaints, and investigations of complaints. These records contain complainants' names; addresses; job titles and descriptions, and dates of employment; agencies involved; counselors' reports; initial and supplemental allegations; letters and notices to individuals and organizations involved in the processing of the complaint; materials placed into the record to support or refute the alleged decisions; determination or actions taken; statements of witnesses; related correspondence; investigative reports; instructions on actions to be taken in order to comply with the provisions of a decision; opinions; recommendations; settlement agreements; and proposed and final decisions.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Secretary's Order 1–2004; Title VII of the Civil Rights Act of 1964, as amended; the Equal Pay Act; the Lilly Ledbetter Fair Pay Act of 2009; the Age Discrimination in Employment Act of 1967, as amended; the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act Amendments Act of 2008; the Genetic Information Nondiscrimination Act of 2008; the Civil Service Reform Act of 1978; the Civil Rights Act of 1991; the No FEAR Act; Executive Order 11478, as amended; Executive Order 11375, as amended; Executive Order 13163; Executive Order 13164; Executive Order 13145; 29 CFR 1614; and the Equal Employment Opportunity Commission's (EEOC) Management Directives 110 (Complaint Processing) and 715 (Effective Affirmative Programs).

**PURPOSE(S):**

These records are used to process, investigate and resolve Equal Employment Opportunity complaints within the Department.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The records in the complaint file are classified into three categories: correspondence, investigative, and transcripts. In addition to the universal routine uses listed in the General Prefatory Statement to this document, records that are relevant and necessary may be disclosed as follows:

a. To responding officials (ROs) or other witnesses consistent with the instructions in the Equal Employment Opportunity Commission's (EEOC's) Complaint Processing Manual which provides that during the investigative process witnesses may be given access to information and documents in the correspondence files and the investigative file where the investigator determines that the disclosure of information or documents is necessary to obtain information from the witness. If the Department issues a final decision on the complaint rejecting the complainant's allegations, ROs or other witnesses may not have access to the complaint file. If the Department takes or proposes adverse action against an RO or other witness, only the records upon which the decision is based, without deletions, must be made available for his or her review.

b. To Federal agencies with jurisdiction over a complaint, including the EEOC, the Office of Personnel Management, the Merit Systems Protection Board, the Office of Special Counsel, and the Federal Labor Relations Authority, for investigatory, conciliation or enforcement purposes.

c. To a physician or medical official for the purpose of evaluating medical documents in complaints of discrimination on the basis of disability.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Files are stored electronically and/or on paper.

**RETRIEVABILITY:**

Paper files are indexed by complainant's name and by the office case number. Electronic files are retrieved by: Office case number; complainant's name; fiscal year; current status of complaint; region code; issue code; basis code; agency code; class action; relief code; EOS identification; investigator identification.

**SAFEGUARDS:**

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

**RETENTION AND DISPOSAL:**

Records are destroyed 4 years after resolution of case. (N1 GRS 80 9 item 1)

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Civil Rights Center, OASAM, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

**NOTIFICATION PROCEDURE:**

An individual wishing to inquire whether this system of records contains non-exempt information about him/her should contact the System Manager. Individuals must furnish in writing the following information for their records to be located and identified: As appropriate, their full name, the name of the employing agency and/or the agency in which the situation arose if different than the employing agency, approximate date of filing complaint, region of complaint, complaint case number, and the kind(s) of action(s) taken.

**RECORD ACCESS PROCEDURES:**

Individuals wishing to request access to their records should contact the System Manager as indicated in the Notification Procedure section above.

**CONTESTING RECORD PROCEDURES:**

A petition for amendment shall be addressed to the System Manager and must meet the requirements of Department's Privacy Act regulations at 29 CFR 71.1 and 71.9.

**RECORD SOURCE CATEGORIES:**

An individual to whom the record pertains; official documents relating to the processing of a complaint, including the informal and formal allegations, and appeals of departmental decisions; and respondent agency officials, employees, and other witnesses.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Under the specific exemption provided by 5 U.S.C. 552a(k)(2), this system of records is exempted from the following provisions of the Privacy Act: (c)(3), (d), (e)(l), (e)(4)(G), (H), and (I), and (f). Release of information from the complaint file to the complainant may be denied in anticipation of a civil action or proceeding, in instances where premature release of documents could hamper the decision-making process, where the release of personal information may result in an invasion of personal privacy, and where release of confidential statements could lead to intimidation or harassment of witnesses and impair future investigations by making it more difficult to collect similar information.

## VIII. PUBLICATION OF A THIRD PROPOSED AMENDED SYSTEM OF RECORDS

### DOL/OASAM—19

**SYSTEM NAME:**

Negotiated Grievance Procedure and Unfair Labor Practice Files.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

a. Human Resources Center, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; and national and regional personnel offices.

b. Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; and regional offices of the Solicitor.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Department employees who have filed grievances under negotiated grievance procedures, and Department employees who have filed unfair labor practices charges against the Department.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system contains a variety of records relating to employee grievances filed under procedures established by labor-management negotiations, and unfair labor practice charges filed under the Federal Service Labor-Management Relations Act. The records may include information such as: employee's name, grade, job title, employment history, arbitrator's decision or report, record of appeal to the Federal Labor Relations Authority, and a variety of employment and personnel records associated with a grievance or charge.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 7121 for grievances, 5 U.S. 7116 for unfair labor practices, Federal Service Labor-Management Relations Act and related amendments of 5 U.S.C. 5596(b) for back pay.

**PURPOSE(S):**

Records are used to process an employee's grievance filed under a negotiated grievance procedure, or an unfair labor practice charge filed by an employee or union.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to the universal routine uses listed in the General Prefatory Statement to this document, records that are relevant and necessary may be disclosed as follows:

a. To disclose information to officials of the Merit System Protection Board or the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Department rules and regulations, investigations or alleged or possible prohibited personnel practices, and such other functions as may be authorized by law.

b. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices or examination of affirmative employment programs.

c. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

d. To disclose information to the union when requested in connection with the union's representation of the Department employee who has filed the grievance or unfair labor practice.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Files are stored electronically and on paper.

**RETRIEVABILITY:**

Records may be retrieved by name and/or case file number.

**SAFEGUARDS:**

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

**RETENTION AND DISPOSAL:**

Records are destroyed 5 years after expiration of agreement. (NC1–64–77–10 item 29a1)

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Human Resources Policy and Strategic Planning, Human Resources Center, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

**NOTIFICATION PROCEDURE:**

Individuals wishing to inquire whether this system contains records pertaining to them should contact the System Manager at the address listed above.

**RECORD ACCESS PROCEDURES:**

Individuals wishing to request access to records in this system should contact the System Manager at the address listed above.

**CONTESTING RECORD PROCEDURES:**

Individuals wishing to petition for amendment to their records contained in this system should contact the System Manager at the address listed above.

**RECORD SOURCE CATEGORIES:**

Individual employees who have filed grievances and charges, employee/supervisor interviews, investigative and employment records, and findings of arbitrators and other tribunals.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Under the specific exemption provided by 5 U.S.C. 552a(k)(2), this system of records is exempted from the following provisions of the Privacy Act: (c)(3), (d), (e)(l), (e)(4)(G), (H), and (I), and (f). Release of information from the complaint file to the complainant may be denied in anticipation of a civil action or proceeding, in instances where premature release of documents could hamper the decision-making process, where the release of personal information may result in an invasion of personal privacy, and where release of confidential statements could lead to intimidation or harassment of witnesses and impair future investigations by making it more difficult to collect similar information.

## IX. PUBLICATION OF A FOURTH PROPOSED AMENDED SYSTEM OF RECORDS

### DOL/OASAM–22

**SYSTEM NAME:**

Civil Rights Center Discrimination Complaint Case Files.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

a. Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

b. Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; and regional offices of the Solicitor.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals, classes of individuals, or representatives designated to act on behalf of individuals, who file complaints against recipients of Department financial assistance, Department conducted programs, or State or local governments that exercise responsibilities, regulate, or administer services, programs, or activities in programs, services, and regulatory activities relating to labor and the workforce in order to enforce Federal law requiring nondiscrimination and equal opportunity.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Complainants' statements of alleged discrimination; respondents' statements; witnesses' statements; names and addresses of complainants and respondents; personal, employment, or program participation information; medical records; conciliation and settlement agreements; related correspondence; initial and final determinations; other records related to investigations of discrimination complaints.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d to 2000d-4; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681–1688; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq.; Section 188 of the Workforce Investment Act of 1998, 29 U.S.C. 2938; Title II, Subpart A, of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12131 et seq.; Executive Orders 13160 and 13166; Secretary's Order 4–2000; 29 CFR parts 31, 32, 33, 35, 36 and 37, and 28 CFR part 35.

**PURPOSE(S):**

These records are used to process, investigate and resolve discrimination complaints filed with the Department against (a) recipients of financial assistance from the Department, and in certain circumstances, from other federal departments and agencies; (b) Department conducted programs or activities; and (c) components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in all programs, services, and regulatory activities relating to labor and the workforce.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to the universal routine uses listed in the General Prefatory Statement to this document, records that are relevant and necessary may be disclosed as follows:

a. To the Equal Employment Opportunity Commission, Department of Justice, and Federal Mediation and Conciliation Service, when relevant to matters within the jurisdiction of those agencies over a complaint, for investigatory, conciliation, enforcement, or litigation purposes.

b. To organizations (and their employees) which are recipients of Federal financial assistance and against whom complaints in an administrative or judicial proceeding are filed to the extent necessary to effectively represent themselves, provided that the privacy of persons not a party to the dispute is protected.

c. To relevant witnesses so that they may be given access to information and documents in the correspondence files and the investigative file where the investigator determines that the disclosure of information or documents is necessary to obtain information from the witness.

d. To the Equal Employment Opportunity Commission, the Department of Justice, the Department of Health and Human Services, and other Federal entities having responsibility for coordinating civil rights activities and/or preparing reports to Congress under authorities indicated in this particular notice.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Files are stored electronically and/or on paper.

**RETRIEVABILITY:**

These records are retrieved by various combinations of office case numbers, complainant's name, fiscal year, current status of complaint, State, basis code, and program code.

**SAFEGUARDS:**

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

**RETENTION AND DISPOSAL:**

Records in this system are destroyed after one to four years. (N1 GRS 92 3 item 25c2).

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Civil Rights Center, OASAM, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

**NOTIFICATION PROCEDURE:**

An individual wishing to inquire whether this system of records contains non-exempt information about himself/herself should contact the System Manager. Individuals must furnish in writing the following information for their records to be located and identified: Full name and address; signature; complaint case number; and approximate date of filing. If the case number is unknown, inquiries should include the name of respondent; and last known status of the complaint.

**RECORD ACCESS PROCEDURES:**

Individuals wishing to request access to records pertaining to them should contact the System Manager as indicated in the Notification Procedure section above.

**CONTESTING RECORD PROCEDURES:**

A petition for amendment shall be addressed to the System Manager and must meet the requirements of the Department's Privacy Act regulations at 29 CFR 71.1 and 71.9.

**RECORD SOURCE CATEGORIES:**

Individual complainants; respondent officials, employees, and witnesses; interrogatories; recipient files and records; and physicians' and other medical service providers' records.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

In accordance with 5 U.S.C. 552a(k)(2), investigatory material in this system of records compiled for law enforcement purposes is exempt from subsections (c)(3); (d); (e)(l); (e)(4)(G), (H), and (I); and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

## X. PUBLICATION OF A FIFTH PROPOSED AMENDED SYSTEM OF RECORDS

### DOL/OCFO–2

**SYSTEM NAME:**

New Core Financial Management System (NCFMS)

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

The information is accessed from the following locations:

A. All Departmental component offices in Washington DC;

B. All Departmental component offices in the Regions.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All persons who receive a payment(s) from an agency/regional finance office, as well as persons who are indebted to DOL. Persons receiving payments include but are not limited to employees, vendors, travelers on official business, grantees, contractors, consultants, and recipients of loans and scholarships. Persons indebted to DOL include but are not limited to persons who have been overpaid, erroneously and/or improperly paid, as well as persons who have received from DOL goods or services for which there is a charge or fee (e.g., Freedom of Information Act requesters).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, date of birth, place of birth, identification number (Taxpayer Identification Number or other identifying number), address, phone number, email address, financial account information, purpose of payment, accounting classification, amount to be paid, date and amount paid.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301.

**PURPOSE(S):**

The records are an integral part of the accounting system at the principal operating location, agency regional offices, and specific area locations. The system uses these records to keep track of all commitments, obligations, and payments to individuals, exclusive of salaries and wages. When an individual is to repay funds advanced as a loan or scholarship, etc., the records could be used to establish a receivable record and to track repayment status. In event of an overpayment to an individual, the record is used to establish a receivable record for recovery of the amount claimed. The records are also used internally to develop reports to the U.S. Department of Treasury and applicable state and local taxing officials of taxable income. This is a Department-wide notice of payment and collection activities at all locations listed under System Locations above.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

A. Transmittal of the records to the U.S. Treasury to effect issuance of payments to payees.

B. Pursuant to section 13 of the Debt Collection Act of 1982, the name, address(es), telephone number(s), identification number (Taxpayer Identification Number or other identifying number), as well as nature, amount and history of debts of an individual may be disclosed to private debt collection agencies for the purpose of collecting or compromising a debt existing in this system.

C. Information may be forwarded to the Department of Justice as prescribed in the Joint Federal Claims Collection Standards (4 CFR Chapter II) for the purpose of determining the feasibility of enforced collection, by referring the cases to the Department of Justice for litigation.

D. Pursuant to sections 5 and 10 of the Debt Collection Act of 1982, information relating to the implementation of the Debt Collection Act of 1982 may be disclosed to other Federal Agencies to effect salary or administrative offsets.

E. Information contained in the system of records may be disclosed to the Internal Revenue Service to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect, compromise, or write off a Federal claim against the taxpayer.

F. Information may be disclosed to the Internal Revenue Service concerning the discharge of an indebtedness owed by an individual.

G. Information will be disclosed:

1. To credit card companies for billing purposes;

2. To other Federal agencies for travel management purposes;

3. To airlines, hotels, car rental companies and other travel related companies for the purpose of serving the traveler. This information will generally include the name, phone number, address, charge card information and itineraries;

4. To state and local taxing officials informing them of taxable income.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

The amount, status, and history of overdue debts; the name and address, identification number (Taxpayer Identification Number or other identifying number), and other information necessary to establish the identity of a debtor; and the agency and program under which the claim arose are disclosed pursuant to 5 U.S.C. 552a(b)(12) to consumer reporting agencies as defined by section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), in accordance with section 3(d)(4)(A)(ii) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(f)) for the purpose of encouraging the repayment of an overdue debt.

**Note:** Debts incurred by use of the official travel charge card are personal and the charge card company may report account information to credit collection and reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are stored electronically and/or on paper.

RETRIEVABILITY:

Retrievability varies according to the particular operating accounting system within the Operating Division, Agency, and Regional Office. Computer records may be retrieved by accounting classification, identification number, voucher number, or on any field in the record.

SAFEGUARDS:

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

RETENTION AND DISPOSAL:

All records in NCFMS are stored and retained for the life of the system and a minimum of six years and three months.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Deputy CFO of Financial Systems, Office of the Chief Financial Officer, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

NOTIFICATION PROCEDURE:

Inquiries should be mailed or presented to the System Manager at the address listed above.

RECORD ACCESS PROCEDURES:

A request for access shall be addressed to the System Manager at the address listed above.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager at the address listed above.

RECORD SOURCE CATEGORIES:

Individuals, employees, other DOL systems, other Federal agencies, credit card companies, government contractors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

## XI. PUBLICATION OF A SIXTH PROPOSED AMENDED SYSTEM OF RECORDS

## DOL/ODEP–2

SYSTEM NAME:

Workforce Recruitment Program for College Students with Disabilities (WRP) Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Disability Employment Policy, U.S. Department of Labor, 200 Constitution Ave NW., Room S–1303, Washington, DC 20210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

College students and recent graduates with disabilities who have interviewed with a WRP recruiter on or through a college campus.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student's name, social security number, address, telephone number, email address, college, major, minor, credits earned, degree sought, graduation date, Grade Point Average, job preference categories, appointment type, job location preference, type of disability, job accommodation information, resume, transcripts, recruiter's summary of student's interview and ratings, veteran status, and Schedule A eligibility.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To provide federal and private sector employers a database resource of college students and recent graduates with disabilities from which to identify qualified temporary and permanent employees in a variety of fields.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those universal routine uses listed in the General Prefatory Statement to this document, relevant information concerning student interviewees may be disclosed to interested federal and private sector employers. Accommodation information concerning interviewees is disclosed to interested federal employers but not to private sector employers.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are stored electronically and/or on paper.

RETRIEVABILITY:

Records are retrieved by candidate's name, identification number, school attended, academic major keyword, graduation date, veteran status, Schedule A eligibility status, interview notes keyword, location preference, appointment type, degree program, and job preference category.

SAFEGUARDS:

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

RETENTION AND DISPOSAL:

The application materials are retained in a secure, online database for one year from date of the interview through December of the next year.

SYSTEM MANAGER(S) AND ADDRESS:

The System Manager is the WRP Project Manager, Office of Disability Employment Policy, U.S. Department of Labor, 200 Constitution Ave NW., Washington, DC 20210.

NOTIFICATION PROCEDURE:

Inquiries should be mailed or presented in writing to the System Manager at the address listed above.

RECORDS ACCESS PROCEDURES:

Individuals wishing to gain access shall write to the Office of Disability Employment Policy at the above address or to request access to the database can register at *www.wrp.gov.*

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager.

RECORD SOURCE CATEGORIES:

College students and recent graduates with disabilities who have participated in an interview with a WRP recruiter.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

## XII. PUBLICATION OF A SEVENTH PROPOSED AMENDED SYSTEM OF RECORDS

### DOL/OALJ–2

**SYSTEM NAME:**

Office of Administrative Law Judges Case Files.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Unassigned case files are maintained by the Chief Administrative Law Judge or a District Chief Administrative Law Judge. Assigned case files are maintained by the presiding Administrative Law Judge. Files may be located in the National Office, U.S. Department of Labor, Office of Administrative Law Judges (OALJ), 800 K St., NW., Washington, DC 20001, or in district offices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Claimants, complainants, respondents, and other party litigants in cases referred to the OALJ for hearing and decision.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records may contain claim files; determinations and referral letters from the agency with initial claim development or investigatory responsibility; documents proffered as evidence; pleadings, motions, and other submissions by litigants; Administrative Law Judge (ALJ), notices, orders, and decisions and orders; hearing transcripts; and other documents and information necessary to hear and decide cases.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Administrative Procedure Act, 5 U.S.C. 553, 554, 556, 557, 571 *et seq.;* Age Discrimination Act of 1975, 42 U.S.C. 6103; 29 CFR part 34; Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.;* 29 CFR part 34; Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–1; 29 CFR part 31; Clean Air Act, 42 U.S.C. 7622; 29 CFR part 24; Consumer Product Safety Improvement Act of 2008, 15 U.S.C. 2087; 29 CFR part 1983; Comprehensive Employment and Training Act, 29 U.S.C. 801–999 (Supp. V 1981); 20 CFR part 676 (1990); Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610; 29 CFR part 24; Contract Disputes Act, 41 U.S.C. 601 *et seq.;* 41 CFR part 29—60; 48 CFR 2933.203.70; Contract Work Hours and Safety Standards Act, 40 U.S.C. 327 et seq.; 29 CFR part 6; Copeland Act, 40 U.S.C. 276c; 29 CFR part 6; Corporate and Criminal Fraud Accountability Act, Title VIII of the Sarbanes Oxley Act, 18 U.S.C. 1514A; 29 CFR part 1980; Davis-Bacon Act, as amended, 40 U.S.C. 276a–276a–7; 29 CFR part 6; Debt Collection Act of 1982, 31 U.S.C. 3711(f); 29 CFR part 20; Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5567; Title IX of the Education Amendments of 1972, 20 U.S.C. 1682; 29 CFR part 34; Employee Polygraph Protection Act of 1988, 29 U.S.C. 2005; 29 CFR part 801, subpart E; Employee Retirement Income Security Act of 1974, 29 U.S.C. 1132 and 1135; 29 CFR parts 2560 and 2570; Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; 29 CFR part 24; Equal Access to Justice Act, 5 U.S.C. 504; 29 CFR part 16; E.O. No. 11,246, as amended, 3 CFR 339 (1964–1965 Comp.) reprinted in 42 U.S.C. 2000e app.; 41 CFR parts 60–1 and 60–30; Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 211(d); 29 CFR part 530, subpart E; Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 214(c); 29 CFR part 525; Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 216(e); 29 CFR part 580; Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 218(C), as added by Affordable Care Act of 2010, P.L. 111–148, 1558; Title IV of the Federal Mine Safety and Health Act of 1977, as amended, 33 U.S.C. 901 et seq.; 20 CFR parts 410, 718, 725 and 727; Federal Railroad Safety Act, 49 U.S.C. 20109; 29 CFR part 1982; Federal Unemployment Tax Act, 26 U.S.C. 3303(b)(3), 3304(c); Federal Unemployment Tax Act (addressing agreements under the Trade Act of 1974, as amended), 26 U.S.C. 3302(c)(3); 20 CFR part 617; Federal Water Pollution Control Act, 33 U.S.C. 1367; 29 CFR part 24; FDA Food Safety Modernization Act, 21 U.S.C. 399d; Immigration and Nationality Act, as amended, 8 U.S.C. 1101(a)(15)(H), 1184 and 1186; 29 CFR part 501, subpart C; Immigration and Nationality Act, as amended, 8 U.S.C. 1101(a)(15)(H), 1182, 1184, 1188, 1288(c); 20 CFR part 655; Immigration and Nationality Act, as amended, 8 U.S.C. 1182(a)(5)(A); 20 CFR part 656; Job Training Partnership Act, 29 U.S.C. 1576; 20 CFR part 627; Labor-Management Reporting & Disclosure Act of 1959, 5 U.S.C. 7120; 29 CFR part 458; Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.* (and its extensions—the Defense Base Act, Outer Continental Shelf Lands Act, District of Columbia Workmen's Compensation Act, 36 DC Code 501 *et seq.,* and Non-appropriated Fund Instrumentalities Act); 20 CFR parts 701, 702 and 704; McNamara-O'Hara Service Contract Act, as amended, 41 U.S.C. 351 *et seq.;* 29 CFR part 6; Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1813, 1853; 29 CFR part 500, subpart F; Moving Ahead for Progress in the 21st Century Act, 49 U.S.C. 30171; National Apprenticeship Act, 29 U.S.C. 50; 29 CFR parts 29 and 30; National Transit Systems Security Act of 2007, 6 U.S.C. 1142; 29 CFR part 1982; Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60129; 29 CFR part 1981; Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3803; 29 CFR part 22; Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; 41 CFR part 60–741, subpart B; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; 29 CFR part 32; Reorganization Plan No. 14 of 1950; and 29 CFR part 6; Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, 29 CFR part 18; Safe Drinking Water Act, 42 U.S.C. 300j–9(i); 29 CFR part 24; Single Audit Act of 1984, 31 U.S.C. 7505; OMB Circular Nos. A–128 and A–110; 29 CFR part 96, subpart 96.6; Seaman's Protection Act, 46 U.S.C. 2114; Social Security Act, 42 U.S.C. 503; 20 CFR part 601; Solid Waste Disposal Act, 42 U.S.C. 6971; 29 CFR part 24; Surface Transportation Assistance Act, 49 U.S.C. 31105; 29 CFR part 1978; Toxic Substances Control Act, 15 U.S.C. 2622; 29 CFR part 24; Vietnam Era Veterans Readjustment Assistance Act, as amended, 38 U.S.C. 4211, 4212; 41 CFR part 60–250, subpart B; Wagner-Peyser Act, as amended, 29 U.S.C. 49 *et seq.;* 20 CFR part 658; Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 38; 41 CFR part 50–203; Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121; 29 CFR part 1979; Workforce Investment Act of 1998, 29 U.S.C. 2801 *et seq.;* 20 CFR parts 652, 660 through 670; 29 CFR Part 37; other statutes, executive orders and regulations providing for an ALJ hearing as they may become applicable in the future.

**PURPOSE(S):**

To maintain the court records for public administrative-adjudicative hearings. These records and information in these records are used as the court record in ALJ hearings conducted pursuant to 5 U.S.C. 552, 553, 554, 556, and 557 and/or a variety of particular statutes and executive orders. The purpose of the system is the adjudication of cases and determination

of issues in hearings and appeals proceedings.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to the universal routine uses listed in the General Prefatory Statement to this document, the Department may disclose relevant and necessary data as follows:

Official case records, including final decisions and orders, may be disclosed to the Federal courts and boards that are charged with reviewing decisions on appeal.

Information from the official record may be disclosed to the parties or their attorneys or their non-attorney representatives in matters pending before the OALJ. Information from case files may also be disclosed pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552.

ALJ decisions and orders and other selected orders are public agency records and are released to the public, for the purpose of creating a body of legal precedent which serves to guide the public regarding the statutes over which the OALJ exercises jurisdiction. Final decisions and orders and other selected orders are available on the agency's internet Web site at *www.oalj.dol.gov* and may be sent to commercial publishing companies for publication in paper form and over the internet. They are also available for public inspection at the OALJ's reading room.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Files are stored electronically and/or on paper.

**RETRIEVABILITY:**

Retrieved by case number or name of party.

**SAFEGUARDS:**

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

**RETENTION AND DISPOSAL:**

In cases where the OALJ is the official custodian, inactive case files are retained for three years before being sent to a Federal Records Center. The Federal Records Center retains the files for an additional 15 years before they are authorized for destruction, except for certain cases designated as precedent setting, which become permanent records. In cases where OALJ is not the official custodian, for example matters relating to Black Lung and Longshore (and extensions) cases, the official file is transferred to the appropriate federal custodial agency. When a case is appealed, the case file is forwarded to the appropriate administrative appellate agency, such as the Benefits Review Board, or the Administrative Review Board.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of Program Operations, U.S. Department of Labor, Office of Administrative Law Judges, 800 K St., NW., Washington, DC 20001.

**NOTIFICATION PROCEDURE:**

Inquiries regarding the existence of records should be in the form of a written, signed request to the System Manager at the above address.

**RECORD ACCESS PROCEDURES:**

Individuals wishing to request access to their records should send a written, signed request to the System Manager.

**CONTESTING RECORD PROCEDURES:**

Individuals wishing to petition for an amendment to their records should send a written, signed request to the System Manager.

**RECORD SOURCE CATEGORIES:**

Records may include information submitted by the agency with initial claims development or investigatory responsibility, claimants, complainants, respondents, and other parties to the case, amicus curiae, ALJs involved in a case, the court reporter, and in the case of remanded cases, the administrative-appellate body or Federal court.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

## XIII. PUBLICATION OF AN EIGHTH PROPOSED AMENDED SYSTEM OF RECORDS

## DOL/OSHA–6

**SYSTEM NAME:**

Program Activity File.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Electronic files are kept at the National Information Technology Center. Paper files are kept at the Occupational Safety and Health Administration's (OSHA's) area offices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Compliance Safety and Health Officers, State Program, Cooperative Program and Compliance Assistance Staff, and Safety and Health Consultants of the Occupational Safety and Health Administration and its grantees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Covering current and future program activities and program support activities conducted by safety and health compliance officers, consultants, and state program, cooperative program and compliance assistance staff. Examples of program activities include inspections, complaint investigations, time tracking, compliance assistance activities, consultations, state program tracking, Voluntary Protection Programs (VPP), Partnership and Alliance activities. Program support activities includes training, administrative duties, and general program work that is not associated with a discrete program activity.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Occupational Safety and Health Act of 1970 (29 U.S.C. 651–678).

**PURPOSE:**

These records are maintained to manage, process and document OSHA program actions and program related activities that support the programs (inspection, complaint investigation, time tracking, compliance assistance, consultation, state program tracking, voluntary protection, partnership and alliance). The data compiled from these records are used to manage day-to-day program operations and to analyze program effectiveness, efficiency and resource utilization in the various program areas and on activities within those program areas. The data are used by agency officials for performance management, planning and policy purposes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

None, except for those universal routine uses listed in the General Prefatory Statement to this document.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Files are stored electronically and/or on paper.

**RETRIEVABILITY:**

Individual records are retrievable by employee identifying number or by activity number for information related to a discrete activity. A system of permissions by job title and organization level will control access to individual records. Aggregate or summary data are retrievable based on a variety of selection criteria, including office, program area, activity type, employee category, etc.

**SAFEGUARDS:**

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

**RETENTION AND DISPOSAL:**

Data files are maintained in accordance with National Archives and Records Administration Records Disposition Schedule.

**SYSTEM MANAGER AND ADDRESS:**

Director, Office of Management Data Systems, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

**NOTIFICATION PROCEDURE:**

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager at the address listed above.

**RECORD ACCESS PROCEDURE:**

Individuals wishing to gain access to records should contact the System Manager at the address listed above.

**CONTESTING RECORD PROCEDURE:**

Individuals wishing to request amendment of any record should contact the System Manager at the address listed above.

**RECORD SOURCE CATEGORIES:**

Data records for program areas including inspection, complaint investigation, time tracking, compliance assistance, consultation, state program tracking, voluntary protection, partnership and alliance, completed by safety and health compliance officers, consultants, and state program, cooperative program and compliance assistance staff.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Not applicable.

## XIV. PUBLICATION OF A NINTH PROPOSED AMENDED SYSTEM OF RECORDS

### DOL/SOL–15

**SYSTEM NAME:**

Solicitor's Office Litigation Files.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

National and regional locations of the Office of the Solicitor.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Plaintiffs, defendants, respondents, witnesses and other individuals who may have provided information relating to, or who may have been involved in matters that are part of litigation in which the Department is involved.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains records, including settlement agreements, gathered by the various Offices of the Solicitor. The records may be derived from materials filed with the Department, court records, pleadings, statements of witnesses, information received from Federal, State, local and foreign regulatory organizations and from other sources. The system also contains records that incorporate the work product of the various Solicitor offices and other privileged documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301.

**PURPOSE(S):**

These records are maintained for the purpose of prosecuting violations of labor laws, for defending lawsuits and claims brought against the Department, and for otherwise representing the Department in litigation matters.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:**

None, except for those universal routine uses listed in the General Prefatory Statement to this document.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Files are stored electronically and/or on paper.

**RETRIEVABILITY:**

By name.

**SAFEGUARDS:**

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

**RETENTION AND DISPOSAL:**

Litigation files are maintained in accordance with the General Records Schedule located at *https://www.dol.gov/dol/records/.*

**SYSTEM MANAGER(S) AND ADDRESS:**

The appropriate Associate Solicitor, Regional Solicitor, or Associate Regional Solicitor, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 and regional offices.

**NOTIFICATION PROCEDURE:**

Inquiries should be mailed or presented to the appropriate System Manager at the address listed above.

**RECORD ACCESS PROCEDURES:**

A request for access shall be addressed to the System Manager at the address listed above.

**CONTESTING RECORD PROCEDURES:**

A petition for amendments shall be addressed to the appropriate System Manager and must meet the requirements of 29 CFR 71.9.

**RECORD SOURCE CATEGORIES:**

Component agency investigative files; investigators; other law enforcement personnel; attorneys; witnesses; informants; other individuals; Federal, State and local agencies; opinion files; miscellaneous files.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Under the specific exemption authority provided by 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (d), (e)(l), (e)(4)(G), (H), (I), and (f) of the Act. Disclosure of the information contained in this system to the subject of the record could enable the subject of the record to take action to escape prosecution and could avail the subject greater access to information than that already provided under rules of discovery. In addition, disclosure of information might lead to intimidation of witnesses, informants, or their families, and impair future investigations by making it more difficult to collect similar information.

## XV. DECOMMISSIONING OF FIVE OBSOLETE SYSTEMS OF RECORDS

**RECORDS:**

1. DOL/ARB–1, *Administrative Review Board Appeals Files*

2. DOL/BRB–1, *Appeals Benefits Review Board*

3. DOL/ECAB–1, *Employees' Compensation Appeals Board Docket Records*

4. DOL/ECAB–2, *Employees' Compensation Appeals Board Deposition Records*

5. DOL/OSBP–2, *Department of Labor Advisory Committee Members Files.*

[FR Doc. 2014–03072 Filed 2–11–14; 8:45 am]

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,221]**

### Plexus Corporation, Neenah Operations Including On-Site Leased Workers From Kelly Services, Inc., Aerotek and Gold Star Solutions, Inc. Neenah, Wisconsin; 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 April 5, 2013, applicable to workers of Plexus Corporation, Neenah Operations, including on-site leased workers from Kelly Services, Inc., Neenah, Wisconsin. The workers are engaged in activities related to the production of printed circuit boards. The notice was published in the **Federal Register** on April 30, 2013 (78 FR 25306).

At the request of Wisconsin State, the Department reviewed the certification for workers of the subject firm. New information from the company shows that workers leased from Aerotek and Gold Star Solutions, Inc. were employed on-site at the Neenah, Wisconsin location of Plexus Corporation, Neenah Operations. The Department has determined that these workers were sufficiently under the control of Plexus Corporation, Neenah Operations to be considered leased workers.

The intent of the Department's certification is to include all workers of the firm who were adversely affected by a shift in the production of printed circuit boards to a foreign country.

Based on these findings, the Department is amending this certification to include workers leased from Aerotek and Gold Star Solutions, Inc. working on-site at the Neenah, Wisconsin location of the subject firm.

The amended notice applicable to TA–W–82,221 is hereby issued as follows:

All workers from Plexus Corporation, Neenah Operations, including on-site leased workers from Kelly Services, Inc., Aerotek and Gold Star Solutions, Inc., Neenah, Wisconsin, who became totally or partially separated from employment on or after December 5, 2011 through April 5, 2015, and all workers in the group threatened with total or partial separation from employment on 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 at Washington, DC, this 29th day of January 2014.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2014–03001 Filed 2–11–14; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,920]**

### Cooper Interconnect, LLC, a Subsidiary of Eaton Corporation Including On-Site Leased Workers from Aerotek, Adecco, J&J Staffing and Superior Talent Resources, Salem, New Jersey; 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 July 30, 2013, applicable to workers of Cooper Interconnect, LLC, a subsidiary of Eaton Corporation, Salem, New Jersey, including on-site leased workers from Aerotek, Adecco and J&J Staffing. The Department's notice of determination was published in the **Federal Register** on August 27, 2013 (78 FR 52978).

At the request of a State Workforce Official, the Department reviewed the certification for workers of the subject firm. The workers were engaged in production of electrical connectors.

The State reports that workers leased from Superior Talent Resources were employed on-site at the Salem, New Jersey location of Cooper Interconnect, LLC. 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 Superior Talent Resources working on-site at the Salem, New Jersey location of Cooper Interconnect, LLC.

The amended notice applicable to TA–W–82,920 is hereby issued as follows:

''All workers of Cooper Interconnect, LLC, a subsidiary of Eaton Corporation, including on-site leased workers from Aerotek, Adecco, J&J Staffing and Superior Talent Resources, Salem, New Jersey, who became totally or partially separated from employment on or after July 18, 2012, through July 30, 2015, and all workers in the group threatened with total or partial separation from employment on July 30, 2013 through July 30, 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 30th day of January, 2014.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2014–02998 Filed 2–11–14; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,506A; TA–W–82,506B]**

### Experian, Information Technology & Operations (Data Center and Technical Services, Telecommunications, Network Services, Compliance and Distributed Applications), Consumer Information Sales Including On-Site Leased Workers From Tapfin, Manpower and Experis; Allen, Texas; Experian, Information Technology & Operations (Data Center And Technical Services, Telecommunications, Network Services, Compliance and Distributed Applications), Consumer Information Sales Including On-Site Leased Workers From Tapfin, Manpower and Experis; Allen, 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 April 4, 2013, applicable to workers of Experian, Experian Healthcare, (medical Present Value (MPV)—Credit Services and Decision Analytics), Austin, Texas (TA–W–82,506), Experian, Information Technology & Operations, (Data Center and Technical Services, Telecommunications, Network Services,

Compliance and Distributed Applications), Allen, Texas (TA–W–82,506A), Experian, Information Technology & Operations, (Data Center and Technical Services, Telecommunications, Network Services, Compliance and Distributed Applications, Allen, Texas (TA–W–82,506B), Experian, Business Information Services, Corporate Marketing, Credit Services, Data Management, Decision Analytics, Information Technology Services, Marketing Services (Broker Sales and Licensing) and Strategic Alliance, Atlanta, Georgia (TA–W–82,506C), Experian, QAS (Experian Marketing Services), Boston, Massachusetts (TA–W–82,506D), Experian, Decision Analytics, (formerly Baker Hill), Carmel, Indiana (TA–W–82,506E), Experian, Experian US Headquarters: Corporate Departments (finance, HRMD, Contracts, Corporate Marketing, Global Corporate Systems, Legal & Regulatory, Risk Management, Strategic Business Development and Investor Relations), Credit Services, Experian Automotive, Costa Mesa, California (TA–W–82,506F), Experian, Experian Consumer Direct (Experian Interactive, Consumerinfo.Com), Costa Mesa, California (TA–W–82,506G), Experian, Marketing Services, El Segundo, California (TA–W–82,506H), Experian, Marketswitch (Decision Analytics), Herndon, Virginia (TA–W–82,506I), Experian, Experian Healthcare (Searchamerica–Credit Services and Decision Analytics), Maple Grove, Minnesota (TA–W–82,506J), Experian, Marketing Services, New York, New York (TA–W–82,506K), Experian, Global Product & Technology Services, Experian Marketing Services (Experian Simmons), New York, New York (TA–W–82,506L), Experian, Experian Marketing Services, New York, New York (TA–W–82,506M), Experian, Credit Services, Marketing Services, Parsippany, New Jersey (TA–W–82,506N), Experian, Experian Healthcare (Medical Present Value (MPV)—Credit Services and Decision Analytics), Plymouth, Massachusetts (TA–W–82,506O), Experian, Experian Healthcare (Medical Present Value (MPV)–Credit Services and Decision Analytics), San Antonio, Texas (TA–W–82,506P), Experian, Fraud Solutions, Decision Analytics (Decision Solutions & Decision Sciences), San Diego, California (TA–W–82,506Q), and Experian, Credit Services, Experian Automotive and Marketing Services, Schaumburg, Illinois (TA–W–82,506R). The worker groups are engaged in the supply of credit reporting services. The worker groups include on-site leased workers from Tapfin, Manpower and Experis who worked at all locations. The notice was published in the **Federal Register** on April 30, 2013 (78 FR 25306). The notice was amended on May 2, 2013 to include the Oakland CheetahMail Office, Oakland, California location of the subject firm. The notice was published in the **Federal Register** on May 15, 2013 (78 FR 28631–28632). The notice was amended again on August 7, 2013 to include the Global Technology Services at the Costa Mesa, California and Schaumburg, Illinois facilities. The notice was published in the **Federal Register** on August 27, 2013 (78 FR 52982–52983).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. Information shows that worker separations occurred during the relevant time period at the Consumer Information Sales unit of Experian, Information Technology & Operations, located at two Allen, Texas facilities (TA–W–82,506A and TA–W–82,506B). The Consumer Information Sales unit supplied various global services for Experian.

Accordingly, the Department is amending the certification to include workers of the Consumer Information Sales unit of Experian located at the above mentioned facilities.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in services of credit reporting services to a foreign country.

The amended notice applicable to TA–W–82,506 (A–S) is hereby issued as follows:

''All workers from Experian, Experian Healthcare, (Medical Present Value (MPV)—Credit Services and Decision Analytics), including on-site leased workers Tapfin, Manpower and Experis, Austin, Texas (TA–W–82,506), Experian, Information Technology & Operations, (Data Center and Technical Services, Telecommunications, Network Services, Compliance and Distributed Applications), Consumer Information Sales, including on-site leased workers from Tapfin, Manpower and Experis, Allen, Texas (TA–W–82,506A), Experian, Information Technology & Operations, (Data Center and Technical Services, Telecommunications, Network Services, Compliance and Distributed Applications, Consumer Information Sales, including on-site leased workers from Tapfin, Manpower and Experis, Allen, Texas (TA–W–82,506B), Experian, Business Information Services, Corporate Marketing, Credit Services, Data Management, Decision Analytics, Information Technology Services, Marketing Services (Broker Sales and Licensing) and Strategic Alliance, including on-site leased workers from Tapfin, Manpower and Experis, Atlanta, Georgia (TA–W–82,506C), Experian, QAS (Experian Marketing Services), including on-site leased workers from Tapfin, Manpower and Experis, Boston, Massachusetts (TA–W–82,506D), Experian, Decision Analytics, (formerly Baker Hill), including on-site leased workers from Tapfin, Manpower and Experis, Carmel, Indiana (TA–W–82,506E), Experian, Experian US Headquarters: Corporate Departments (finance, HRMD, Contracts, Corporate Marketing, Global Corporate Systems, Legal & Regulatory, Risk Management, Strategic Business Development and Investor Relations), Credit Services, Global Technology Services (GTS), Experian Automotive, including on-site leased workers from Tapfin, Manpower and Experis, Costa Mesa, California (TA–W–82,506F), Experian, Experian Consumer Direct (Experian Interactive, Consumerinfo.Com), Global Technology Services (GTS), including on-site leased workers from Tapfin, Manpower and Experis, Costa Mesa, California (TA–W–82,506G), Experian, Marketing Services, including on-site leased workers from Tapfin, Manpower and Experis, El Segundo, California (TA–W–82,506H), Experian, Marketswitch (Decision Analytics), including on-site leased workers from Tapfin, Manpower and Experis, Herndon, Virginia (TA–W–82,506I), Experian, Experian Healthcare (Searchamerica–Credit Services and Decision Analytics), including on-site leased workers from Tapfin, Manpower and Experis, Maple Grove, Minnesota (TA–W–82,506J), Experian, Marketing Services, including on-site leased workers from Tapfin, Manpower and Experis, New York, New York (TA–W–82,506K), Experian, Global Product & Technology Services, Experian Marketing Services (Experian Simmons), including on-site leased workers from Tapfin, Manpower and Experis, New York, New York (TA–W–82,506L), Experian, Experian Marketing Services, including on-site leased workers from Tapfin, Manpower and Experis, New York, New York (TA–W–82,506M), Experian, Credit Services, Marketing Services, including on-site leased workers from Tapfin, Manpower and Experis, Parsippany, New Jersey (TA–W–82,506N), Experian, Experian Healthcare (Medical Present Value (MPV)—Credit Services and Decision Analytics), including on-site leased workers from Tapfin, Manpower and Experis, Plymouth, Massachusetts (TA–W–82,506O), Experian, Experian Healthcare (Medical Present Value (MPV)–Credit Services and Decision Analytics), including on-site leased workers from Tapfin, Manpower and Experis, San Antonio, Texas (TA–W–82,506P), Experian, Fraud Solutions, Decision Analytics (Decision Solutions & Decision Sciences), including on-site leased workers from Tapfin, Manpower and Experis, San Diego, California (TA–W–82,506Q), and Experian, Credit Services, Experian Automotive and Marketing Services, Global Technology Services (GTS), including on-site leased workers from Tapfin, Manpower and Experis, Schaumburg, Illinois (TA–W–82,506R), Experian, Oakland CheetahMail Office, including on-site leased workers from Tapfin, Manpower and Experis, Oakland, California (TA–W–82,506S), who became totally or

partially separated from employment on or after February 26, 2012 through April 4, 2015, and all workers in the group threatened with total or partial separation from employment on 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 at Washington, DC this 29th day of January 2014.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2014–03002 Filed 2–11–14; 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 *January 20, 2014 through January 24, 2014.*

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 No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 83,139 | GEA Bloomington Production Operations, General Electric Company, GE Appliances. | Bloomington, IN | September 30, 2012. |
| 83,236 | Cameron International Corporation, Process and Compression Systems Division. | Ponca City, OK | November 21, 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 No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 83,185 | Honeywell Process Solution—Mercury Instruments LLC, Honeywell International Inc., Engineered Field Solutions, Manpower, Cortech. | Cincinnati, OH | October 30, 2012. |
| 83,206 | Dyno Nobel, Inc., Initiation Systems Division | Ulster Park, NY | November 6, 2012. |
| 83,274 | Eaton Corporation, Cooper Power Systems Division | Pewaukee, WI | March 12, 2013. |
| 83,274A | Adecco, Eaton Corporation, Cooper Power Systems Division | Pewaukee, WI | December 6, 2012. |
| 83,279 | OneWest Resources LLC, OneWest Bank, FSB, Cognizant, Legal People, Randstad and Solugenix. | Kalamazoo, MI | December 5, 2012. |
| 83,290 | EMCO USA, LLC | Zanesville, OH | December 12, 2012. |
| 83,303 | Amphenol Interconnect Products, Eastern Temporaries | Endicott, NY | December 17, 2012. |
| 83,306 | New United Motor Manufacturing, Inc., NUMMI, Toyota Motor Corporation, Attorney Network Services. | Newark, CA | December 17, 2012. |

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 83,333 | Katana Summit, LLC, Associated Staffing, Advanced Services, and SOS Staffing. | Columbus, NE | February 13, 2012. |

**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 criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 83,339 | Veeco Instrument Inc., VIBE Document Control Team, VIBE Plainview, Engineering Service, HCL. | Plainview, NY. | |

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 No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 83,200 | Ebay Enterprise, DBA GSI Commerce, eBay, Inc., Pacoima Fulfillment/As Seen on TV, Select. | Pacoima, CA. | |
| 83,265 | Pacific Bell Telephone Company, AT&T Technologies, Street Address Guide (SAG) Division. | Pasadena, CA. | |
| 83,321 | Lata Enviromental Services of Kentucky, LLC, Los Alamos Technical Associates, Inc. | Kevil, KY. | |

I hereby certify that the aforementioned determinations were issued during the period of *January 20, 2014 through January 24, 2014.* 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.

Signed at Washington, DC, this 30th day of January 2014.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2014–03000 Filed 2–11–14; 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 February 24, 2014.

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 February 24, 2014.

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 30th day of January 2014.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

APPENDIX

[13 TAA petitions instituted between 1/20/14 and 1/24/14]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 85022 | Intrepid Potash—New Mexico LLC (Company) | Carlsbad, NM | 01/22/14 | 01/17/14 |
| 85023 | United Technologies Aerospace Systems (Union) | Chula Vista, CA | 01/22/14 | 01/17/14 |
| 85024 | Emerson Network Power (2 Sites) (Company) | Delaware, OH | 01/22/14 | 01/20/14 |
| 85025 | Philips Electronics/Philips Healthcare (Workers) | Bothell, WA | 01/22/14 | 01/22/14 |
| 85026 | Rol-Tech, Inc. (Workers) | Fort Loramie, OH | 01/22/14 | 01/16/14 |
| 85027 | CHF Industries, Inc. (Company) | Loris, SC | 01/22/14 | 01/17/14 |
| 85028 | M & D Metal Finishing (Company) | Blaine, MN | 01/23/14 | 01/22/14 |
| 85029 | Oldcastle Building Envelope (State/One-Stop) | Everett, WA | 01/23/14 | 01/21/14 |
| 85030 | Cameron International Corporation (State/One-Stop) | Electra, TX | 01/23/14 | 01/22/14 |
| 85031 | Iron Mountain Information Management, LLC (Company) | Boston, MA | 01/23/14 | 01/22/14 |
| 85032 | Harrington Tool Company (Company) | Ludington, MI | 01/23/14 | 01/20/14 |
| 85033 | Littelfuse, Inc. (State/One-Stop) | Bellingham, WA | 01/23/14 | 01/22/14 |
| 85034 | Celestica Aerospace Technology Corporation (Workers) | Austin, TX | 01/24/14 | 01/23/14 |

[FR Doc. 2014–02999 Filed 2–11–14; 8:45 am]

**BILLING CODE 4510–FN–P**

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Proposed Collection; Comment Request

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) is soliciting public comments on the proposed information collection described below. The proposed information collection will be sent to the Office of Management and Budget (OMB) for review, as required by the provisions of the Paperwork Reduction Act of 1995.

**DATES:** Comments on this information collection must be submitted on or before April 14, 2014.

**ADDRESSES:** Submit electronic comments to Mr. Joel Schwartz, Chief Guidelines Officer at *jschwartz@neh.gov.*

**SUPPLEMENTARY INFORMATION:** The NEH will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 35). This notice is soliciting comments from members of the public and affected agencies. NEH is particularly interested in comments which help the agency 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 estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of electronic submissions of responses.

This Notice also lists the following information:

*Type of Review:* New Collection.

*Agency:* National Endowment for the Humanities.

*Title of Proposal:* General Clearance Authority to Develop Evaluation Instruments for the National Endowment for the Humanities.

*OMB Number:* N/A.

*Affected Public:* NEH grantees.

*Total Respondents:* 600.

*Frequency of Collection:* On occasion.

*Total Responses:* 600.

*Average Time per Response:* 60 minutes.

*Estimated Total Burden Hours:* 600 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request. These comments will also become a matter of public record.

Dated: February 3, 2014.

**Carole Watson,**

*Deputy Chairman.*

[FR Doc. 2014–02986 Filed 2–11–14; 8:45 am]

**BILLING CODE 7536–01–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings of Humanities Panel

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of Meetings.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that twelve meetings of the Humanities Panel will be held during March 2014, as follows. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951–960, as amended).

**DATES:** See **SUPPLEMENTARY INFORMATION** section for meeting dates.

**ADDRESSES:** The meetings will be held at the Old Post Office Building, 1100 Pennsylvania Ave. NW., Washington, DC 20506. See **SUPPLEMENTARY INFORMATION** section for meeting room numbers.

**FOR FURTHER INFORMATION CONTACT:** Lisette Voyatzis, Committee Management Officer, 1100 Pennsylvania Ave. NW., Room 529, Washington, DC 20506, or call (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

**SUPPLEMENTARY INFORMATION:**

**Meetings**

1. DATE: March 18, 2014. TIME: 8:30 a.m. to 5:00 p.m. ROOM: Via conference call. This meeting will discuss applications on the subject of Social Sciences for the Collaborative Research grant program, submitted to the Division of Research Programs.

2. DATE: March 19, 2014. TIME: 8:30 a.m. to 5:00 p.m. ROOM: Via conference call. This meeting will discuss applications on the subject of New World Archeology for the Collaborative Research grant program, submitted to the Division of Research Programs.

3. DATE: March 20, 2014. TIME: 8:30 a.m. to 5:00 p.m. ROOM: Via conference call. This meeting will discuss applications on the subject of History for the Collaborative Research grant program, submitted to the Division of Research Programs.

4. DATE: March 25, 2014. TIME: 8:30 a.m. to 5:00 p.m. ROOM: Via conference call. This meeting will discuss applications on the subject of The Americas for the Collaborative Research grant program, submitted to the Division of Research Programs.

5. DATE: March 25, 2014. TIME: 8:30 a.m. to 5:00 p.m. ROOM: Via conference call. This meeting will discuss applications on the subject of U.S. History and Culture for the Museums, Libraries, and Cultural Organizations: Implementation Grants program, submitted to the Division of Public Programs.

6. DATE: March 25, 2014. TIME: 8:30 a.m. to 5:00 p.m. ROOM: 415. This meeting will discuss applications for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

7. DATE: March 26, 2014. TIME: 8:30 a.m. to 5:00 p.m. ROOM: 415. This meeting will discuss applications for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

8. DATE: March 26, 2014. TIME: 8:30 a.m. to 5:00 p.m. ROOM: Via conference call. This meeting will discuss applications on the subject of Old World Archeology for the Collaborative Research grant program, submitted to the Division of Research Programs.

9. DATE: March 26, 2014. TIME: 8:30 a.m. to 5:00 p.m. ROOM: 426. This meeting will discuss applications on the subject of History for the Media Projects: Production Grants program, submitted to the Division of Public Programs.

10. DATE: March 27, 2014. TIME: 8:30 a.m. to 5:00 p.m. ROOM: Via conference call. This meeting will discuss applications on the subject of Philosophy, Religion, and the History of Science for the Collaborative Research grant program, submitted to the Division of Research Programs.

11. DATE: March 27, 2014. TIME: 8:30 a.m. to 5:00 p.m. ROOM: 426. This meeting will discuss applications on the subject of U.S. History and Culture for the Museums, Libraries, and Cultural Organizations: Implementation Grants program, submitted to the Division of Public Programs.

12. DATE: March 28, 2014. TIME: 8:30 a.m. to 5:00 p.m. ROOM: Via conference call. This meeting will discuss applications on the subject of Arts and Literature for the Collaborative Research grant program, submitted to the Division of Research Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Dated: February 6, 2014.

**Lisette Voyatzis,**

*Committee Management Officer.*

[FR Doc. 2014–02985 Filed 2–11–14; 8:45 am]

**BILLING CODE 7536–01–P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** on April 9, 2013, at 78 FR 21160, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission (including comments) may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

*Comments:* Comments regarding (a) whether the collection of information is necessary for the proper performance of

the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

**DATES:** Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

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

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* 2013 Microbusiness Innovation Science and Technology Survey.

*OMB Number:* 3145–NEW.

*Type of Request:* Intent to seek approval to establish an information collection.

## Overview of This Information Collection

The National Center for Science and Engineering Statistics (NCSES) of the National Science Foundation (NSF) plans to conduct a pilot of the new Microbusiness Innovation Science & Technology (MIST) Survey. MIST will collect R&D and other innovation-related data from small, independent U.S. microbusinesses with fewer than five employees. In addition to general information—primary business activity, year business was formed, and number of employees—this survey will collect the following:

- Business data on R&D activity and funding,
- number of employees and R&D employees,
- sales of goods and services,
- operating agreements and licensing activities with universities, other businesses, and government agencies (federal, state, and local),
- experience with several forms of technology transfer,
- use and importance of patents and other forms of intellectual property,
- sources of technical knowledge, and
- demographic and entrepreneurial characteristics of the business owner.

## Background

NCSES is broadly tasked with measuring the role of science and technology (S&T) in the United States' economy and abroad. A major component of this activity is its sponsorship of the Business Research and Development (R&D) Innovation Survey (BRDIS), which collects information annually on research and development and related activities performed within the United States by industrial firms. In 2004 the National Academy of Sciences' Committee on National Statistics (CNSTAT) reviewed NSF's portfolio of R&D surveys and recommended that NSF explore ways to measure firm innovation and investigate the incidence of R&D activities in growing sectors, such as small business enterprises, not currently covered by BRDIS. BRDIS collects information annually on research and development and related activities performed within the United States by industrial firms. However, businesses with fewer than five employees are excluded from this survey. MIST will fill that void.

*Respondents:* Establishments (Typically owners or senior level managers of microbusinesses).

*Number of Respondents:* 3,200.

*Burden on the Public:* 1,600 total hours (30 minutes per respondent).

Dated: February 7, 2014.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2014–03049 Filed 2–11–14; 8:45 am]

BILLING CODE 7555–01–P

# NUCLEAR REGULATORY COMMISSION

**[NRC–2014–0021]**

## Corrective Action Programs for Fuel Cycle Facilities

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory guide; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG–3044, ''Corrective Action Programs for Fuel Cycle Facilities.'' This DG describes methods and procedures that the NRC staff considers acceptable when developing corrective action programs (CAPs) for fuel cycle facilities.

**DATES:** Submit comments by March 14, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

**ADDRESSES:** You may submit comments by 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–2014–0021. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals 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 06A–A44M, 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:** Sabrina Atack, Office of Nuclear Material Safety and Safeguards, telephone: 301–287–9075, email: *Sabrina.Atack@nrc.gov;* or Steve Burton, Office of Nuclear Regulatory Research, telephone: 301–415–7000, email:

*Stephen.Burton@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

## I. Accessing Information and Submitting Comments

### *A. Accessing Information*

Please refer to Docket ID NRC–2014–0021 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–2014–0021.
- *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 DG and regulatory analysis are available electronically in ADAMS under Accession Nos. ML13219B204 and ML13219B210.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

### *B. Submitting Comments*

Please include Docket ID NRC–2014–0021 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 you comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

## II. Additional Information

The NRC is issuing for public comment a draft guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the NRC staff needs in its review of applications for permits and licenses.

The DG, entitled, ''Corrective Action Programs for Fuel Cycle Facilities,'' is temporarily identified by its task number, DG–3044. Draft Guide-3044 is proposed Revision 0 of new Regulatory Guide 3.75.

This DG describes methods and procedures that the NRC staff considers acceptable when developing CAPs for fuel cycle facilities.

## III. Backfitting and Issue Finality

This DG describes programmatic elements that the NRC staff considers acceptable for CAPs for fuel cycle facilities licensed under parts 40 or 70 of Title 10 of the *Code of Federal Regulations* (10 CFR) and gaseous diffusion plants under 10 CFR part 76. Applicants for such facilities and certificates of compliance, as well as existing licensees and holders of certificate of compliance, may use the guidance in the DG, if finalized, in developing, implementing or revising CAPs. Licensees may choose to develop and implement CAPs that meet the guidance in this DG for the purpose of applying Section 2.3.2 of the NRC Enforcement Policy. The NRC staff may find methods or solutions that differ from those described in this DG acceptable for the purpose of applying Section 2.3.2 of the NRC Enforcement Policy if those methods or solutions effectively implement controls to identify, document, and correct conditions adverse to safety and security.

Applicants for, and holders of fuel cycle licenses under 10 CFR part 40 are not subject to backfitting protection, inasmuch as the NRC's regulations do not provide backfitting protection to 10 CFR part 40 applicants or licensees.

This DG, if finalized, would not constitute backfitting for any fuel cycle facility applicants or licensees subject to backfitting protection under 10 CFR part 70, or applicants for or holders of certificates of compliance for gaseous diffusion plants under 10 CFR part 76. No 10 CFR part 70 licensee or holder of a 10 CFR part 76 certificates of compliance is required to comply with the guidance, and a licensee or holder of a certificate of compliance is free to demonstrate that its corrective action program is effective in identifying, documenting, and correcting conditions adverse to safety and security in order to be within the purview of Section 2.3.2 of the NRC Enforcement Policy. With respect to applicants or potential applicants for 10 CFR part 70 licenses and 10 CFR part 76 certificates of compliance, such entities are not protected by the backfitting provisions in 10 CFR parts 70 and 76. Backfitting is intended to protect the reasonable expectations of certain entities who have received NRC regulatory approvals (e.g., a license), and was not intended to apply to NRC actions which substantially change the expectations of current and future applicants.

This DG, if finalized, would not apply to any nuclear power reactors subject to 10 CFR parts 50 or 52. Therefore, backfitting considerations under 10 CFR 50.109 or issue finality considerations under 10 CFR part 52 are not applicable to this DG.

Dated at Rockville, Maryland, this 6th day of February, 2014.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2014–03012 Filed 2–11–14; 8:45 am]

**BILLING CODE 7590–01–P**

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# NUCLEAR REGULATORY COMMISSION

## Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Digital I&C; Notice of Meeting

The ACRS Subcommittee on Digital I&C will hold a briefing on February 18, 2014, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of a portion that may be closed to protect proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

**Tuesday, February 18, 2014—1:00 p.m. Until 5:00 p.m.**

The Subcommittee will review the safety evaluation associated with the Diablo Canyon Power Plant (DCPP) Units 1 and 2 digital replacement of the process protection system (PPS) portion of the Reactor Trip System (RTS) and Engineering Safety Features Actuation (ESFAS) license amendment request (LAR). The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christina Antonescu (Telephone 301–415–6792 or Email: *Christina.Antonescu@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on November 8, 2013 (78 CFR 67205–67206).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: February 4, 2014.

**Cayetano Santos,**

*Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2014–03057 Filed 2–11–14; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on Reliability & PRA; Notice of Meeting

The ACRS Subcommittee on Reliability & PRA will hold a meeting on February 19, 2014, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

**Wednesday, February 19, 2014—8:30 a.m. Until 5:00 p.m.**

The Subcommittee will discuss staff's progress on the Level 3 Probabilistic Risk Assessment (PRA) Project. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or Email: *John.Lai@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on November 8, 2013 (78 CFR 67205–67206).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: January 29, 2014.

**Cayetano Santos,**

*Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2014–03059 Filed 2–11–14; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: 3206–0187, We Need Information About Your Missing Payment, RI 38–31

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** 30-day notice and request for comments.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0187, We Need Information About Your Missing Payment, RI 38–31. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on September 9, 2013 at Volume 78 FR 55123 allowing for a 60-

day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**DATES:** Comments are encouraged and will be accepted until March 14, 2014. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** RI 38–31 is sent in response to a notification by an individual of the loss or non-receipt of a payment from the Civil Service Retirement and Disability Fund. This form requests the information needed to enable OPM to trace and/or reissue payment. Missing payments may also be reported to OPM by a telephone call.

**Analysis**

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* We Need Information About Your Missing Payment.

*OMB:* 3206–0187.

*Frequency:* On occasion.

*Affected Public:* Individuals or Households.

*Number of Respondents:* 8,000.

*Estimated Time per Respondent:* 17 minutes.

*Total Burden Hours:* 1,333 hours.

U.S. Office of Personnel Management.

**Katherine Archuleta,**

*Director.*

[FR Doc. 2014–02992 Filed 2–11–14; 8:45 am]

**BILLING CODE 6325–38–P**

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## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: 3206–0233, Civil Service Retirement System Survivor Annuitant Express Pay Application for Death Benefits, RI 25–51

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** 30-day notice and request for comments.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0233, Civil Service Retirement System Survivor Annuitant Express Pay Application for Death Benefits, RI 25–51. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on September 11, 2013 at Volume 78 FR 55766 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**DATES:** Comments are encouraged and will be accepted until March 14, 2014. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** RI 25–51 will be used by the Civil Service Retirement System solely to pay benefits to the widow(er) of an annuitant. This application is intended for use in immediately authorizing payments to an annuitant's widow or widower, based on the report of death, when our records show the decedent elected to provide benefits for the applicant.

**Analysis**

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Civil Service Retirement System Survivor Annuitant Express Pay Application for Death Benefits.

*OMB:* 3206–0233.

*Frequency:* On occasion.

*Affected Public:* Individuals or Households.

*Number of Respondents:* 34,800.

*Estimated Time per Respondent:* 30 minutes.

*Total Burden Hours:* 17,400.

U.S. Office of Personnel Management.

**Katherine Archuleta,**

*Director.*

[FR Doc. 2014–02990 Filed 2–11–14; 8:45 am]

BILLING CODE 6325–38–P

## OFFICE OF PERSONNEL MANAGEMENT

### Hispanic Council on Federal Employment

**AGENCY:** Office of Personnel Management.

**ACTION:** Scheduling of council meetings.

**SUMMARY:** The Hispanic Council on Federal Employment will hold its 2014 Council meetings on the dates and location shown below. The Council is an advisory committee composed of representatives from Hispanic organizations and senior government officials. Along with its other responsibilities, the Council shall advise the Director of the Office of Personnel Management on matters involving the recruitment, hiring, and advancement of Hispanics in the Federal workforce. The Council is co-chaired by the Chief of Staff of the Office of Personnel Management and the Chair of the National Hispanic Leadership Agenda (NHLA).

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at any of the meetings. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

**DATES:**

February 27, 2014 from 2 p.m.–4 p.m.

April 17, 2014 from 2 p.m.–4 p.m.

June 19, 2014 from 2 p.m.–4 p.m.

August 21, 2014 from 2 p.m.–4 p.m.

October 16, 2014 from 2 p.m.–4 p.m.

December 19, 2014 from 10 a.m.–12 p.m.

**LOCATION:** U.S. Office of Personnel Management, 1900 E St. NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Veronica E. Villalobos, Director for the Office of Diversity and Inclusion, Office of Personnel Management, 1900 E St. NW., Suite 5H35, Washington, DC 20415. Phone (202) 606–0020 FAX (202) 606–6042 or email at *veronica.villalobos@opm.gov.*

U.S. Office of Personnel Management.

**Katherine Archuleta,**

*Director.*

[FR Doc. 2014–02989 Filed 2–11–14; 8:45 am]

BILLING CODE 6325–B2–P

## OFFICE OF PERSONNEL MANAGEMENT

### Privacy Act of 1974: New System of Records

**AGENCY:** U.S. Office of Personnel Management (OPM).

**ACTION:** Notice of a new system of records.

**SUMMARY:** The Office of Personnel Management is proposing to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency (5 U.S.C. 552a(e)(4)). The Investigative Training Records (Internal 19) system of records has been operational since June 2005 without incident. Previously, OPM has relied on preexisting Privacy Act system of records notices for the collection and maintenance of these records. In an effort to increase transparency, OPM is publishing a separate notice for this system.

**DATES:** This addition will be effective without further notice forty (40) calendar days from the date of this publication, unless we receive comments that result in a contrary determination.

**ADDRESSES:** Send written comments to the Program Manager for the Freedom of Information and Privacy Act Office, Federal Investigative Services, U.S. Office of Personnel Management, 1137 Branchton Road, P.O. Box 618, Boyers, Pennsylvania 16018.

**FOR FURTHER INFORMATION CONTACT:** Program Manager, Freedom of Information and Privacy Act office, *FISSORNComments@opm.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Office of Personnel Management Federal Investigative Services (OPM–FIS) proposes to establish a new system of records titled Investigative Training Records (Internal 19). This system of records allows OPM–FIS to document training given to OPM employees, contractors, and other Federal employees and contractors by, through, or in conjunction with the FIS National Training Center (NTC), including records on those who register for training, but do not attend. It will provide OPM with a means to track the training that is provided; the expenditure of training and related funds; identify training needs and trends; assess the effectiveness of training; schedule classes and instructors; determine individual qualifications for appointment or promotion in the Federal service as applicable; and respond to requests for information related to the training offered by or through FIS.

U.S. Office of Personnel Management.

**Katherine Archuleta,**

*Director.*

#### Office of Personnel Management OPM/Internal-19

**SYSTEM NAME:**

Investigative Training Records.

**SYSTEM LOCATION:**

United States Office of Personnel Management, Federal Investigative Services, (OPM FIS) 131 Rebecca Lane, Slippery Rock, PA 16057.

OPM FIS 1050 Hull Street, Baltimore, MD 21230.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former employees of OPM, contractors, and employees of other Federal agencies who have applied for, participated in, or assisted with a training program or course offered by, through, or in conjunction with the Federal Investigative Services National Training Center (FIS–NTC).

Current and former employees of OPM FIS that have applied for tuition reimbursement.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The records in this system may contain the following pertaining to training: Individual's name; date of birth; social security number; address; phone number; email address; occupation, including employing agency/company and supervisor's name and contact information; location, dates and name of training class; schedules; course rosters; sign in sheets and records of attendance; requests for training and/or registration forms; payment records; records of equipment issuance; exercises, study aids, reference tools, assessments, examination and testing material, including pre-course material, if applicable; grades and student evaluations, course critiques; requests for tuition reimbursement and supporting documentation; and other reports pertaining to training. This

would also include any and all materials described above that may also be contained within the FIS Professional Development Portal.

**Note:** Some of these records may also become part of the GOVT 1, General Personnel Records system and/or GOVT 2, Employee Performance File System Records system.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Federal Records Act, 44 U.S.C. 3101; 5 U.S.C. 301; 5 U.S.C. Ch. 41; E.O. 13467; E.O. 13488, E.O. 11348, as amended; E.O. 9397, as amended by 13478.

**PURPOSE(S):**

This system will document training given to current and former employees of OPM, contractors, and employees of other Federal agencies who have applied for, participated in, or assisted with a training program or course offered by, through, or in conjunction with the Federal Investigative Services National Training Center (FIS–NTC), including records on those who register for training, but do not attend. It will provide OPM with a means to track the training that is provided; the expenditure of training and related funds; identify training needs and trends; assess the effectiveness of training; schedule classes and instructors; determine individual qualifications for appointment or promotion in the Federal service as applicable; and respond to requests for information related to the training offered by or through OPM FIS.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to outside entities, as is determined to be relevant and necessary, outside OPM as a routine use pursuant to 5 U.S.C. 552a(b)(3).

1. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency. In those instances where the request comes from a person or entity other than the Government, records will be disclosed only pursuant to a subpoena executed by a judge.

2. To the appropriate Federal, state, local, tribal, foreign, or other public authority responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OPM becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

3. To disclose information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. However, the training records, or parts thereof, will only be released to a congressional office if OPM receives a notarized authorization or signed statement under 28 U.S.C. 1746 from the subject of the investigation.

5. For National Archives and Records Administration—To disclose information to the National Archives and Records Administration for use in records management inspections.

6. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which OPM is authorized to appear, when:

(a) OPM, or any component thereof; or

(b) Any employee of OPM in his or her official capacity; or

(c) Any employee of OPM in his or her individual capacity where the Department of Justice or OPM has agreed to represent the employee; or

(d) The United States, when OPM determines that litigation is likely to affect OPM or any of its components; is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OPM is deemed by OPM to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which records were collected.

7. For the Merit Systems Protection Board—To disclose information to officials of the Merit Systems Protection Board or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

8. For the Equal Employment Opportunity Commission—To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures or other functions vested in the Commission and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

9. For the Federal Labor Relations Authority—To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

10. Within OPM for Statistical/Analytical Studies—By OPM in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

11. For Non-Federal Personnel-To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government who have a need to know the information contained in this system.

12. To appropriate agencies, entities, and persons when (1) OPM suspects or has confirmed that the security or confidentiality of the information in a system of records has been compromised; (2) OPM has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by OPM or another agency or entity) that rely on the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the OPM's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

13. To educational institutions or training facilities for purposes of enrollment and verification of attendance and performance.

14. To employers to the extent necessary to obtain information

pertinent to the individual's fitness and qualification for training and to provide training status.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are stored electronically or on paper in secure facilities in locked cabinets. The records are stored on computer tapes, as digital images, on CD–ROM and in electronic databases.

**RETRIEVABILITY:**

Records are retrieved by the name, social security number and/or other unique identifier of the individual on whom they are maintained.

**SAFEGUARDS:**

Paper files are stored in a locked cabinet in a secure facility with an intrusion alarm system. Electronic records are on a secure OPM server in a limited access room. Access to the records is limited to those individuals who have a need to know the information in the performance of their official duties.

**RETENTION AND DISPOSAL:**

Individual training records will be maintained indefinitely until a retention schedule is approved by NARA.

**SYSTEM MANAGER(S) AND ADDRESS:**

Associate Director, Federal Investigative Services, U.S. Office of Personnel Management, PO Box 618, 1137 Branchton Road, Boyers, PA 16018.

**NOTIFICATION AND RECORD ACCESS PROCEDURE:**

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(c)(3) and (d), regarding accounting of disclosures, and access to and amendment of records. The section of this notice titled Systems Exempted from Certain Provisions of the Act indicates the kinds of material exempted and the reasons for exempting them from access.

Individuals wishing to learn whether this system contains information about them or to request access should contact the FOI/PA, U.S. Office of Personnel Management, Federal Investigative Services, P.O. Box 618, 1137 Branchton Road, Boyers, PA 16018–0618, in writing. Written requests must contain the following information:

a. Full name, former name, and any other names used.

b. Date and place of birth.

c. Social Security Number.

d. Any available information regarding the type of record involved to include the date of training.

e. The address to which the record information should be sent.

f. You must sign your request.

In addition, the requester must provide an original notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. The written authorization must also include an original notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

Individuals requesting access must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

**AMENDMENT PROCEDURES:**

Individuals wishing to request amendment to their non-exempt records should contact the Federal Investigations Processing Center in writing. Requests should be directed only to the U.S. OPM Federal Investigative Services. Individuals must furnish the following information for their records to be located and identified:

a. Full name, former name, and any other names used.

b. Date and place of birth.

c. Social Security Number.

d. Any available information regarding the type of record involved to include the date of the training.

e. The address to which the record information should be sent.

f. You must sign your request

In addition, the requester must provide an original notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. The written authorization must also include an original notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

Individuals requesting amendment must also comply with OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

**RECORD SOURCE CATEGORIES:**

Information originates within OPM, from the individual to whom the record pertains, and external educational institutions and training facilities.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

OPM has claimed that all information in these records that meets the criteria stated in 5 U.S.C. 552a(k) (6) is exempt from the requirements of the Privacy Act that relate to providing an accounting of disclosures to the data subject, and access to and amendment of records (5 U.S.C. 552a(c)(3) and (d)).

This system may contain the following types of information:

Testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process.

[FR Doc. 2014–02984 Filed 2–11–14; 8:45 am]

BILLING CODE 6325–53–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71504; File No. SR–NASDAQ–2014–010]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ's Rule Governing Directed Orders

February 6, 2014.

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 January 24, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 NASDAQ's rule governing Directed Orders. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, 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.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASDAQ Rule 4751(f)(9) governs the use of Directed Orders on NASDAQ. As described in the current rule, Directed Orders are orders that are directed to an exchange other than NASDAQ, as directed by the entering party, without checking the NASDAQ book. If a Directed Order is unexecuted, the order (or unexecuted portion thereof) is returned to the entering party. Thus, a Directed Order will execute at another venue if the venue has liquidity available at the price of the order and if its execution would be consistent with Regulation NMS. A Directed Order may be designated as an Intermarket Sweep Order.

NASDAQ is proposing to modify the rule to make it clear that a Directed Order may be sent to an exchange, or to any other automated trading center. The change is necessitated by the fact that in the near future (as early as February 3, 2014), an electronic communications network that currently displays its automated quotations through another exchange is expected to begin displaying its quotations through the Financial Industry Regulatory Authority's Automated Display Facility (the ''ADF'').[3] Since a Directed Order sent to the ADF would technically not be sent to an exchange, the change in the rule text will accommodate this refinement to the Directed Order functionality. The Directed Order functionality is not available, and will not under the change be made available, to direct orders to trading venues that do not display quotations.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(5) of the Act[5] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, NASDAQ believes that the change will make it clear that NASDAQ may route Directed Orders to the entities quoting on the ADF, as well as to exchanges, thereby facilitating transactions in securities for which entities quoting on the ADF are posting liquidity at prices favorable to market participants.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the change has the potential to increase the competitiveness of NASDAQ's routing functionality while also ensuring that NASDAQ members may use NASDAQ to access liquidity available on entities that are quoting on the ADF.

*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[6] and subparagraph (f)(6) of Rule 19b–4[7] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[8] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[9] 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 Exchange has requested the Commission to waive the 30-day operative delay, as well as the 5-day pre-filing requirement, so that the proposed rule change may become effective and operative upon filing. The Commission believes that waiving the 30-day operative delay and the 5-day pre-filing requirement are consistent with the protection of investors and the public interest. NASDAQ wishes to modify its rule to make it clear that a Directed Order may be sent to an exchange or to any automated trading center. Waiver will allow the Exchange to immediately implement the proposed rule change, thereby reducing the potential for confusion among member organizations and the public about whether a Directed Order can be sent to the ADF or any other automated trading center. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the

[3] *https://www.lavatrading.com/news/pdf/LavaFlow_ADF_Migration.pdf.*

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(a)(ii).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested a waiver of this requirement.

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] 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).

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2014–010 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–010, and should be submitted on or before March 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–03009 Filed 2–11–14; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71502; File No. SR–MIAX–2014–06]**

## Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

February 6, 2014.

Pursuant to the provisions of 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 January 29, 2014, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing a proposal to amend its Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to establish a $0.30 transaction fee for executions in standard option contracts and $0.03 transaction fee for Mini Option contracts for non-member broker-dealers on the Exchange.

The current transaction fees for non-member broker dealers on the Exchange are $0.45 per contract for standard options or $0.045 for Mini Options.[3] The Exchange proposes lowering the non-member broker-dealer transaction fees to bring the fee rates in line with several competing exchanges.[4] The proposed transaction fees are designed both to enhance the Exchange's competitiveness with other option exchanges and to strengthen its market quality. The Exchange believes that the new transaction fees will increase both intermarket and intramarket competition by incenting broker-dealers on other exchanges to direct additional orders to the Exchange to allow the Exchange to compete more effectively with other options exchanges for such transactions. To the extent that this purpose is achieved, the Exchange believes that other market participants on the Exchange will benefit from the additional liquidity and trading opportunities available from such orders.

The Exchange proposes to implement the new transaction fees beginning February 1, 2014.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposal is fair, equitable and not unreasonably discriminatory. The

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* MIAX Options Fee Schedule, Section 1(a)(ii)—Other Market Participant Transaction Fees.

[4] *See* NYSE Amex Options Fee Schedule, p. 4 (Tiered rates starting at $0.32 per contract for electronic broker-dealers); ISE Schedule of Fees, p. 6 ($0.30 per contract for broker-dealers in Non-Select Symbols).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

proposal is reasonable because it results in a decrease in non-member broker dealer transactions fees for all non-member broker dealers on the Exchange in order to enable the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed fees are fair and equitable and not unreasonably discriminatory because they will apply equally to all non-member broker-dealers. All non-member broker-dealers will be subject to the same transaction fee, and access to the Exchange is offered on terms that are not unfairly discriminatory.

The decrease in transaction fees for non-member broker-dealers should incent broker-dealers on other exchanges to direct additional orders to the Exchange to allow the Exchange to compete more effectively with other options exchanges for such transactions. To the extent that this purpose is achieved, the Exchange believes that other market participants on the Exchange will benefit from the additional liquidity and trading opportunities available from such orders.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposal increases both intermarket and intramarket competition by incenting broker-dealers on other exchanges to direct additional orders to the Exchange to allow the Exchange to compete more effectively with other options exchanges for such transactions. To the extent that this purpose is achieved, the Exchange believes that other market participants on the Exchange will benefit from the additional liquidity and trading opportunities available from such orders. 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. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposal reflects this competitive environment because it reduces the Exchange's fees in a manner that encourages non-member broker-dealers to provide liquidity and to attract order flow to the Exchange.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2014–06 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–MIAX–2014–06. 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–MIAX–2014–06 and should be submitted on or before March 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–03007 Filed 2–11–14; 8:45 am]

**BILLING CODE 8011–01–P**

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71498; File No. SR–BATS–2013–066]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rules To Hold a Volatility Closing Auction

February 6, 2014.

**I. Introduction**

On December 19, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 11.23 to add a new auction type known as the Volatility Closing Auction. The proposed rule change was published for comment in the **Federal Register** on December 27, 2013.[3] The Commission received one comment on the proposal.[4] On January

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71162 (December 20, 2013), 78 FR 79030 (''Notice'').

[4] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Abraham Kohen, AK FE

14, 2014, BATS filed Amendment No. 1 to the proposed rule change.[5] This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposal

In its filing with the Commission, the Exchange proposes to add a new auction type to its rules, a Volatility Closing Auction, which will apply any time that an Exchange-listed security is halted during the last 10 minutes of Regular Trading Hours[6] or where the Quote-Only Period[7] of a Halt Auction would be extended during the last 10 minutes of Regular Trading Hours. In particular, the Exchange proposes to add the Volatility Closing Auction in preparation for the operation during the last 15 minutes of Regular Trading Hours of the National Market System Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''Plan'').[8]

The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands.[9] The requirements of the Plan are coupled with Trading Pauses, or halts, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). The Commission approved the Plan, as amended, on a one-year pilot basis.[10] The Plan first became operational in April of 2013, with a staged rollout with respect to the portion of the trading day to which the Plan applies as well as the securities subject to the Plan. All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan. The Exchange is a Participant in the Plan.

As currently implemented, the Limit Up-Limit Down Plan applies to securities between 9:30 a.m. and 3:45 p.m. E.T. each trading day. In the near future, the operation of the Plan will be extended to include the time between 3:45 p.m. and 4:00 p.m. E.T., which is the end of Regular Trading Hours on the Exchange and is when the Exchange typically conducts a Closing Auction for each of its listed securities. The Exchange proposes to adopt rules for a Volatility Closing Auction in connection with the extension of the Plan to the end of Regular Trading Hours.

The Exchange proposes to add new paragraph (e) to Rule 11.23 to govern the operation of Volatility Closing Auctions on the Exchange, which will be auctions of Exchange-listed securities that are halted in the last 10 minutes of Regular Trading Hours or where the Quote-Only Period of a Halt Auction would be extended during the last 10 minutes of Regular Trading Hours.[11] As noted by the Exchange, a Volatility Closing Auction would operate in certain respects like an Exchange Halt Auction as described in Exchange Rule 11.23(d) and in other respects like an Exchange Closing Auction as described in Exchange Rule 11.23(c).[12]

According to the Exchange, similar to a Halt Auction on the Exchange, a Volatility Closing Auction will have a period of time that orders are accepted for participation in such auction during which no trading is occurring on the Exchange (the ''Quote-Only Period'').[13] The Quote-Only Period with respect to a Volatility Closing Auction would commence at the time a security is halted between 3:50 p.m. and 4:00 p.m. and will end at 4:00 p.m.[14] Thus, to the extent the Exchange halts a security after 3:55 p.m. but before 4:00 p.m., such security will be halted for less than five minutes prior to the Volatility Closing Auction.[15] The Exchange believes this is appropriate because it will ensure that the final auction of the day in all Exchange-listed securities consistently occurs at 4:00 p.m. E.T.[16]

The Exchange notes it will not extend the Quote-Only Period associated with a Volatility Closing Auction, which is the same as with a Closing Auction.[17] In contrast, the Exchange's rules related to Exchange Halt Auctions provide that the Quote-Only Period may be extended where there are unmatched market orders on the auction book associated with the auction and where the indicative price moves the greater of 10% or fifty (50) cents in the fifteen (15) seconds prior to the Halt Auction, both to ensure that there is sufficient interest and stability after a halt to reopen the security for trading.[18] Halt Auctions, however, occur during Regular Trading Hours and the Exchange retains discretion to not extend the Quote-Only Period of a Halt Auction such that it would interfere with a Closing Auction. While the Exchange acknowledges that some of the same issues for which the ability to extend the Quote-Only Period of a Halt Auction may exist where there are unmatched market orders or dramatic price movements near the end of the Quote-Only Period of the Volatility Closing Auction, the Exchange believes that these concerns are outweighed by the importance of providing members and the investing public with a definitive market close and an official closing price at 4:00 p.m. E.T. The Exchange believes that the clarity that comes from requiring that a Volatility Closing Auction occurs at 4:00 p.m. E.T. will help reduce uncertainty for members participating in the Volatility Closing Auction.[19]

The Exchange highlights certain elements of its closing process that promote a fair and orderly closing, despite its determination to have Volatility Closing Auctions conclude at 4:00 p.m. E.T. First, the Exchange notes that, even where a halt is declared very near 4:00 p.m. E.T., it has proposed that all Volatility Closing Auctions be required to close at a price level within the Collar Price Range[20] in order to ensure that the Volatility Closing Auction price is based on rational and current market conditions.[21] Second,

Consultants LLC, dated December 23, 2013 (''Kohen Letter''). The commenter questioned the Exchange's determination to refer to the new auction type as the Volatility Closing Auction and suggested that a more specific Web site address should be used within the Notice to direct readers to the text of the proposed rule change. The Exchange did not respond to the comment.

[5] In Amendment No. 1, BATS amended the proposal to make clear that where a halt occurs before 3:50 p.m. E.T. and the Quote-Only Period for the associated Halt Auction would be extended between 3:50 p.m. and 4:00 p.m. E.T. such Halt Auction will, instead of being extended, immediately become a Volatility Closing Auction. The Amendment also proposes to amend the definition of ''Quote-Only Period'' as defined in Exchange Rule 11.23(a)(17) to include Volatility Closing Auctions.

[6] Regular Trading Hours are defined in Exchange Rule 1.5(w) as the time between 9:30 a.m. to 4:00 p.m. E.T.

[7] Quote-Only Period means a designated period of time prior to a Halt Auction or an IPO Auction during which Users may submit orders to the Exchange for participation in the auction. *See* Exchange Rule 11.23(a)(17).

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility).

[9] Unless otherwise specified, capitalized terms used herein are based on the defined terms of the Plan.

[10] *See supra* note 8.

[11] *See* Notice, *supra* note 3 at 79031.

[12] *See Id.*

[13] *See Id.*

[14] *See* Proposed Rule 11.23(e).

[15] *See* Notice, *supra* note 3 at 79031. The Exchange clarified that where a halt occurs before 3:50 p.m. E.T. and the Quote-Only Period for the associated Halt Auction would be extended between 3:50 p.m. and 4:00 p.m. E.T., such Halt Auction will, instead of being extended, immediately become a Volatility Closing Auction. *See* Amendment No. 1.

[16] *See Id.*

[17] *See Id.*

[18] *See* Exchange Rule 11.23(d)(2)(B).

[19] *See* Notice, *supra* note 3 at 79031–2.

[20] *See* Exchange Rule 11.23(a)(6).

[21] *See* Notice, *supra* note 3 at 79032.

the Exchange further restricts the price of a Volatility Closing Auction by using the Final Last Sale Eligible Trade as the Volatility Closing Auction price where no limit orders from one or both sides would participate in the Volatility Closing Auction.[22] According to the Exchange, this restriction ensures that there is crossed limit interest in the Volatility Closing Auction if the Volatility Closing Auction price is going to look to the entered limit interest to determine the price, which prevents a single limit order from interacting with market orders to determine the Volatility Closing Auction Price.[23] Finally, the Exchange notes that it retains discretion under Rule 11.23(f) (re-numbered pursuant to this proposal) to adjust the timing of or suspend an auction with prior notice to Users where the interests of a fair and orderly market so require.[24] As noted by the Exchange, in a situation where the Exchange deemed it necessary to adjust the timing of a Volatility Closing Auction in order to maintain a fair and orderly market, *i.e.,* to a time later than 4:00 p.m. E.T., the Exchange would notify Exchange Users in advance of the time that the auction would occur and would provide for a Quote-Only period prior to such auction.[25]

During the Quote-Only Period of a Volatility Closing Auction, the Exchange will accept all orders eligible to participate in both a Halt Auction and a Closing Auction in order to avoid participant confusion and to facilitate participation in the Volatility Closing Auction. This includes limit and market orders as well as any Eligible Auction Orders applicable to a Closing Auction on the Exchange. Thus, the Exchange will accept Regular Hours Only orders (''RHOs''), Limit-On-Close orders (''LOCs''), Late-Limit-On-Close orders (''LLOCs'') and Market-On-Close orders (''MOCs'') for participation in a Volatility Closing Auction, and the typical restrictions on such orders will apply. For instance, as with a Closing Auction, the Exchange will not accept any LOCs or MOCs after 3:55 p.m. E.T. Similarly, the Exchange will not accept any LLOCs before 3:55 p.m. E.T. The Exchange notes, however, that, while these restrictions remain in place, regular limit and market orders can be entered and cancelled without restriction at any time prior to execution. In contrast to a typical Closing Auction, however, because the Exchange is accepting Eligible Auction Orders only to facilitate participation in and avoid confusion during the Volatility Closing Auction and because a User could alternatively enter and cancel limit orders and market orders without restriction during the Quote-Only Period, Eligible Auction Orders associated with a Volatility Closing Auction may also be cancelled at any time prior to execution.[26] The Exchange believes that allowing participants to cancel orders specifically designated for a Closing Auction up to the time of the Volatility Closing Auction is appropriate because halts or extensions of a Quote-Only Period of a Halt Auction in the last 10 minutes of the trading day necessitating a Volatility Closing Auction may be indicative of price dislocation in a security and because such orders may have been entered well before such event occurred.[27]

With respect to market data, the Exchange represents that it will disseminate the same information that it does for other auctions conducted on the Exchange.[28] Thus, coinciding with the beginning of the Quote-Only Period for a security and updated every five seconds thereafter, the Reference Price, Indicative Price, Auction Only Price, and the lesser of Reference Buy Shares and Reference Sell Shares associated with the Volatility Closing Auction will be disseminated by the Exchange via electronic means.

The Exchange represents that it will conduct a Volatility Closing Auction in a manner similar to a Halt Auction. Specifically, orders will be executed at the price that maximizes the number of shares executed in the auction.[29] For ETPs, orders will be executed at the price level within the Collar Price Range that maximizes the number of shares executed in the auction. In the event of a volume based tie at multiple price levels, the price level closest to the Final Last Sale Eligible Trade will be used for Volatility Closing Auctions. Where no limit orders from one or both sides (the buy side, the sell side, or both the buy and sell side) would participate in a Volatility Closing Auction, the Volatility Closing Auction will occur at the price of the Final Last Sale Eligible Trade. According to the Exchange, the only differences between the processing of a Halt Auction and a Volatility Closing Auction are that: (1) The Volatility Closing Auction price will be used as the official closing price for dissemination to the consolidated tape (the ''BATS Official Closing Price''), and (2) a Volatility Closing Auction will not be delayed due to a market order imbalance or due to a significant change in the Indicative Price, which can extend the Quote-Only Period of a Halt Auction, as explained above.[30]

The Exchange also proposes to process a Volatility Closing Auction in a manner consistent with auctions conducted by the Exchange, in that, as proposed, market orders, including MOCs, will have higher priority than other Volatility Closing Auction Eligible Orders.[31] To the extent there is executable contra side interest, such market orders will be executed at the BATS Official Closing Price according to time priority. After the execution of all market orders, the remaining orders priced at or more aggressively than the BATS Official Closing Price will be executed on the basis of price/time priority.[32]

The Exchange will transition to the After Hours Trading Session[33] following a Volatility Closing Auction in much the way that it does for a Closing Auction.[34] Thus, limit order shares that are not executed in the Volatility Closing Auction will remain on the Exchange's order book during the After Hours Trading Session, subject to a User's instructions and the fact that certain auction specific limit orders will be cancelled.[35] RHO, LOC, LLOC, MOC and market order shares that are not executed in the Volatility Closing Auction will be cancelled at the conclusion of the Volatility Closing Auction.[36] According to the Exchange, the only difference between this transition and a typical Closing Auction is that market orders are also cancelled, which differs only because such orders may enter the Volatility Closing Auction in the first place.[37] Other than MOCs, which are specifically designated for a Closing Auction, market orders cannot participate in Closing Auctions because they do not post to the Continuous Book,[38] and thus the Exchange does not

[22] *See* Proposed Rule 11.23(e)(2)(B).

[23] *See* Notice, *supra* note 3 at 79032.

[24] *See* Proposed Rule 11.23(f).

[25] *See* Notice, *supra* note 3 at 79032.

[26] In a Closing Auction, LOC and MOC orders cannot be cancelled in the five minutes leading up to the auction.

[27] *See* Notice, *supra* note 3 at 79033.

[28] *Id.* at 79031.

[29] *See* Proposed Rule 11.23(e)(2)(B).

[30] *See* Notice, *supra* note 3 at 79032.

[31] *See* Proposed Rule 11.23(e)(2)(C).

[32] *See Id.*

[33] The After Hours Trading Session is defined in Exchange Rule 1.5(c) and currently means the time between 4:00 p.m. to 5:00 p.m. E.T.

[34] *See* Proposed Rule 11.23(e)(3).

[35] *See Id.*

[36] *See Id.*

[37] *See* Notice, *supra* note 3 at 79032.

[38] Market orders received by the Exchange are executed or routed by the Exchange to other market centers but do not post to the Exchange's Continuous Book. *See* Rules 11.9(a)(2), 11.13(a)(1) and 11.13(a)(2). The Continuous Book is defined in

address their transition to the After Hours Trading Session in its Closing Auction transition process.

In addition to the changes described above, in order to correct a typographical error in the original filing that proposed Rule 11.23, the Exchange proposes to re-number paragraphs (g), (h) and (i) as (f), (g) and (h), respectively. Finally, the Exchange proposes to add a reference to the new auction type, a Volatility Closing Auction, to current paragraph (h) (to be re-numbered as (g).

## III. Discussion and Commission Findings

After careful review of the proposal, as modified by Amendment No. 1, and the comment letter received [39] the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[40] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[41] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public.

The Exchange notes that all aspects of the proposed Volatility Closing Auction are based upon existing processes built into both the Exchanges' Halt Auction and the Exchange's Closing Auction. Consistent with existing auctions, the Exchange will accept all orders eligible to participate in both a Halt Auction and a Closing Auction and market orders, including MOCs, will have higher priority than other Volatility Closing Auction Eligible Orders. Such market orders, including MOCs, will be executed at the BATS Official Closing Price according to time priority to the extent there is executable contra side interest, after which remaining orders priced at or more aggressively than the BATS Official Closing Price will be executed on the basis of price/time priority.[42] Additionally, the Exchange will continue to disseminate the same market data information for Volatility Closing Auctions as it does with existing auctions.

Without the proposal, the Exchange notes that it could potentially have a Halt Auction within minutes of the Closing Auction, which could cause unnecessary confusion. The Exchanges believes that this proposal is consistent with the Act and that the operation of a Volatility Closing Auction for securities listed on the Exchange will assist in the price discovery process and help to ensure a fair and orderly market for securities listed on the Exchange that are halted at the end of the trading day. The Exchange believes this proposal will ensure that market participants have a single closing price at the end of the trading day.

The Exchange's proposed Volatility Closing Auctions differs from its Halt Auctions and Closing Auctions in certain ways that it believes are appropriate and consistent with the Act. As discussed above, the Exchange's Volatility Closing Auction differs from its Halt Auction in that the Quote-Only Period for the Volatility Closing Auction will not, as a general matter, be extended. While the Exchange acknowledges that some of the same issues for which the ability to extend the Quote-Only Period of a Halt Auction may exist where there are unmatched market orders or dramatic price movements near the end of the Quote-Only Period of the Volatility Closing Auction, the Exchange believes that these concerns are outweighed by the importance of providing members and the investing public with a definitive market close and an official closing price at 4:00 p.m. E.T. The Exchange believes the clarity that comes from requiring a Volatility Closing Auction to occur at 4:00 p.m. E.T. will help reduce uncertainty for Members participating in the Volatility Closing Auction.[43]

Despite its determination to have Volatility Closing Auctions conclude at 4:00 p.m. E.T., the Exchange highlights certain elements of its closing process that it believes promote a fair and orderly market and closing prices that are based on rational and current market conditions. As explained above, the Exchange has proposed certain price and execution constraints for the Volatility Closing Auction to ensure that the auction occurs at a price that is based on rational and current market conditions.[44] Additionally, the Exchange reiterates that it retains discretion under Rule 11.23(f) to adjust the timing of or suspend an auction with prior notice to Users where the interests of a fair and orderly market so require.

The proposed Volatility Closing Auction also differs from Closing Auctions. Specifically, orders specifically designated for the Closing Auction are not permitted to be canceled after a certain time for Closing Auctions. In contrast, the Exchange proposes to allow participants to cancel orders specifically designated for a Closing Auction up to the time of the Volatility Closing Auction. The Exchange states that this is appropriate because the halt of trading of a security or extension of the Quote-Only Period of a Halt Auction in the last 10 minutes of the trading day necessitating a Volatility Closing Auction may be indicative of price dislocation in a security and because such orders may have been entered well before such halt occurred.[45] The Exchange believes it is appropriate and in the best interests of investors and the public interest to allow orders to be cancelled in such an event.

For the various reasons noted above, the Commission finds that the proposed rule change as modified by Amendment No. 1 is consistent with the Act, including Section 6(b)(5) of the Act,[46] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public.

The Commission finds good cause to approve the filing, as modified by Amendment No. 1 to the proposed rule change, prior to the thirtieth day after the date of the publication of notice of the filing thereof in the **Federal Register**. The proposed revisions should further enhance the Exchange's policies and procedures with respect to the operation of the Limit Up-Limit Down Plan. Accelerated approval would allow the Exchange to update its rule text immediately, thus providing users with greater clarity and certainty with respect to the use of the new Volatility Closing Auction functionality offered by the Exchange in anticipation of the application of the Limit Up-Limit Down

Exchange Rule 11.23(a)(7) as all orders on the BATS Book that are not Eligible Auction Orders.

[39] *See* Kohen Letter. The Commission believes that the Exchange may refer to this new auction as the Volatility Closing Auction as it directly relates to the policies and procedures necessary to implement the Limit Up-Limit Down Plan. The Commission believes that the commenter's more general comments regarding the domain address where an Exchange's rules are posted are not germane to this proposed rule change.

[40] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[41] 15 U.S.C. 78f(b)(1).

[42] *See* Proposed Rule 11.23(e)(2)(C).

[43] *See* Notice, *supra* note 3 at 79031–2.

[44] *See supra* notes 21–26, 30, and accompanying text.

[45] The Exchange notes that its existing Halt Auction process allows orders to be cancelled prior to such auction.

[46] 15 U.S.C. 78f(b)(1).

plan through the end of Regular Trading Hours. Accordingly, the Commission finds that good cause exists, consistent with Section 6(b)(5) of the Act, to approve the filing, as modified by Amendment No. 1, on an accelerated basis.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2013–066 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2013–066. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2013–066, and should be submitted on or before March 5, 2014.

**V. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[47] that the proposed rule change, SR–BATS–2013–066, as modified by amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71503; File No. SR–NYSEArca–2014–13]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services To Add a New Pricing Tier Applicable to Orders That Add Liquidity on the Exchange

February 6, 2014.

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 January 28, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''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 the Substance of the Proposed Rule Change**

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (''Fee Schedule'') to add a new pricing tier applicable to orders that add liquidity on the Exchange. The Exchange proposes to implement the fee change on February 1, 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 Exchange proposes to amend the Fee Schedule to add a new pricing tier applicable to orders that add liquidity on the Exchange. The Exchange proposes to implement the fee change effective February 1, 2014.

The Exchange proposes to add a new ''Step Up Tier 3'' applicable to an ETP Holder, including a Market Maker, that on a daily basis, measured monthly, directly executes providing volume (''Adding ADV'') during the billing month that is both (i) at least 0.20% of U.S. consolidated average daily volume (''U.S. CADV'') for the billing month and (ii) at least 0.125% taken as a percentage of U.S. CADV for the billing month over the ETP Holder's December 2013 Adding ADV taken as a percentage of U.S. CADV in December 2013 (''Baseline % CADV'').[4] For example, if U.S. CADV during the billing month is 7 billion shares, an ETP Holder's Adding ADV during the billing month would first need to be at least 14 million shares (i.e., at least 0.20% of U.S. CADV for the billing month). If U.S. CADV in December 2013 was 6 billion shares and an ETP Holder's December 2013 Adding ADV was 6 million shares, the ETP Holder's Baseline % CADV would be 0.10% (i.e., the ETP Holder's December 2013 Adding ADV taken as a percentage

[47] 15 U.S.C. 78s(b)(2).

[48] 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] U.S. CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early. Transactions that are not reported to the Consolidated Tape are not included in U.S. CADV. An ETP Holder with zero Adding ADV in December 2013 (e.g., a firm that became an ETP Holder after December 2013) would be treated as having Baseline % CADV of zero for purposes of the proposed Step Up Tier 3.

of U.S. CADV in December 2013). The ETP Holder's Adding ADV during the billing month would therefore need to be at least 0.225% of U.S. CADV for the billing month (i.e., Baseline % CADV of 0.10% plus at least 0.125%), which would equate to at least 15.75 million shares of Adding ADV and would therefore be a ''step up'' of 9.75 million shares.

A qualifying ETP Holder would receive a credit of $0.0004 per share for (i) Adding ADV in Tape A securities during the billing month taken as a percentage of U.S. CADV in Tape A securities in the billing month in excess of the Baseline % CADV in Tape A securities and (ii) Adding ADV in Tape C securities during the billing month taken as a percentage of U.S. CADV in Tape C securities in the billing month in excess of the Baseline % CADV in Tape C securities.[5] Continuing with the example above, if the ETP Holder's Adding ADV during the billing month was the minimum of 15.75 million shares identified above, and if 8 million shares consisted of Tape A securities, and further if 3.2 billion of the 7 billion shares of overall U.S. CADV during the billing month were in Tape A securities, then the ETP Holder's Adding ADV in Tape A securities taken as a percentage of U.S. CADV in Tape A securities during the billing month would be 0.25% (i.e., 8 million divided by 3.2 billion). Also, assume that in December 2013 4.5 million shares of the ETP Holder's Baseline % CADV consisted of Tape A securities and that 3 billion of the 6 billion shares of overall U.S. CADV in December 2013 were in Tape A securities. The ETP Holder's Baseline % CADV in Tape A securities would be 0.15% (i.e., 4.5 million divided by 3 billion). The excess in the billing month over December 2013 would be 0.10% (i.e., 0.25% minus 0.15%). 0.10% of U.S. CADV in Tape A securities for the billing month would be 3.2 million shares (i.e., 0.01 multiplied by 3.2 billion shares U.S. CADV in Tape A securities). Therefore, an average daily credit of $1,280 would apply under proposed Step Up Tier 3 for the ETP Holder's Tape A securities during the billing month (i.e., $0.0004 multiplied by 3.2 million), which would be a monthly credit of $26,880 (with 21 trading days in the month). The same analysis would be performed with respect to the ETP Holder's Tape C securities.

The credits provided under the proposed Step Up Tier 3 would be in addition to the ETP Holder's Tiered or Basic Rate credit(s); provided, however, that such combined credit would not be permitted to exceed $0.0034 per share. For example, an ETP Holder that qualifies for Investor Tier 3 receives a credit of $0.0032 under Investor Tier 3.[6] If this same ETP Holder also qualifies for the proposed Step Up Tier 3, its orders (i) in Tape A securities that are eligible for the Step Up Tier 3 credit would receive an additional credit of $0.0002 (i.e., $0.0032 under Investor Tier 3 plus a remaining $0.0002 under proposed Step Up Tier 3), and (ii) in Tape C securities that are eligible for the Step Up Tier 3 credit would receive an additional credit of $0.0002 (i.e., $0.0032 under Investor Tier 3 plus a remaining $0.0002 under proposed Step Up Tier 3).

Lead Market Makers (''LMMs'') on the Exchange could not qualify for the proposed new Step Up Tier 3, nor would LMM provide volume apply to the applicable volume requirements proposed for the new Step Up Tier 3.[7] Retail Order Tier and Retail Order Cross-Asset Tier ETP Holders and Market Makers also could not qualify for the proposed new Step Up Tier 3, nor would Retail Order provide volume apply to the applicable volume requirements.[8]

Finally, for ETP Holders that qualify for the proposed new Step Up Tier 3, Tiered or Basic Rates would apply to all other fees and credits, based on a firm's qualifying levels, and if an ETP Holder qualifies for more than one tier in the Fee Schedule, the Exchange would apply the most favorable rate available under such tiers.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] 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 that the proposed change is reasonable because the proposed Step Up Tier 3 credit would encourage ETP Holders to send additional orders to the Exchange across all Tapes for execution in order to qualify for an incrementally higher credit for such executions in Tape A and Tape C securities that add liquidity on the Exchange. In this regard, the Exchange believes that this may incentivize ETP Holders to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes that the rate proposed for the Step Up Tier 3 credit is reasonable because it is directly related to an ETP Holder's level of executions in Tape A and Tape C Securities during the month. This rate is also within the range of other credits available to ETP Holders that execute providing volume during a billing month that is greater than during a particular ''baseline'' month.[11]

The Exchange believes that the proposed Step Up Tier 3 credit is also equitable and not unfairly discriminatory because it would incentivize ETP Holders to submit orders in securities across all Tapes to the Exchange and would result in a credit that is reasonably related to an exchange's market quality that is associated with higher volumes. Moreover, like existing pricing on the Exchange that is tied to ETP Holder volume levels, the Exchange believes that the proposed Step Up Tier 3 credit is equitable and not unfairly discriminatory because it would be available for all ETP Holders, including Market Makers, on an equal and non-discriminatory basis. The Exchange also believes that it is equitable and not unfairly discriminatory that orders that provide liquidity in Tape B securities would not be eligible for a credit under the proposed Step Up Tier 3 because the Exchange's Fee Schedule currently already includes a ''Tape B Step Up Tier'' that provides for a similar credit

[5] Orders that provide liquidity in Tape B securities would count toward the ETP Holder's qualification for the proposed Step Up Tier 3, but such orders would not be eligible for a credit under the proposed Step Up Tier 3. The Exchange's Fee Schedule currently already includes a ''Tape B Step Up Tier'' that provides for a similar credit of $0.0004 per share only for orders in Tape B securities that provide liquidity.

[6] Investor Tier 3 requires that an ETP Holder (1) provide liquidity of 0.60% or more of the U.S. CADV per month, (2) maintain a ratio of cancelled orders to total orders less than 30%, excluding Immediate-or-Cancel orders, and (3) maintain a ratio of executed liquidity adding volume-to-total volume of greater than 50%.

[7] The Exchange's Fee Schedule currently already includes separate pricing applicable only to LMMs.

[8] The Retail Order Tier and Retail Order Cross Asset Tier currently already provide for credits applicable only to Retail Orders.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See, e.g.,* the ''Tape B Step Up Tier,'' for which a corresponding credit of $0.0004 applies.

of $0.0004 per share only for orders in Tape B securities that provide liquidity.

The Exchange also believes that it is equitable and not unfairly discriminatory that the proposed $0.0004 credit under the Step Up Tier 3 would not be permitted to exceed $0.0034 per share when combined with other credits available to ETP Holders under other tiers specified in the Fee Schedule because the ETP Holders that qualify for these specified tiers would already receive a higher credit for such executions.

Similarly, the Exchange believes that it is equitable and not unfairly discriminatory to prohibit LMMs on the Exchange from qualifying for the proposed new Step Up Tier 3 and to exclude LMM provide volume from applying to the applicable volume requirements proposed for the new Step Up Tier 3. This is because, like ETP Holders that qualify for other tiers in the Fee Schedule that provide for incrementally higher credits, LMMs are already eligible for increased credits that range from $0.0035 per share to $0.0045 per share for executions of transactions that add liquidity to the Exchange.

The Exchange also believes that it is equitable and not unfairly discriminatory to prohibit Retail Order Tier and Retail Order Cross-Asset Tier ETP Holders from qualifying for the proposed new Step Up Tier 3 and to exclude Retail Orders from applying to the applicable volume requirements proposed for the new Step Up Tier 3. This is because Retail Orders, and the ETP Holders that submit them, are already eligible for increased credits that range from $0.0033 to $0.0034 per share for executions of transactions that add liquidity to the Exchange.

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,[12] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change will encourage competition, including by attracting additional liquidity to the Exchange, which will make the Exchange a more competitive venue for, among other things, order execution and price discovery. In general, ETP Holders impacted by the proposed change may readily adjust their trading behavior to maintain or increase their credits or decrease their fees in a favorable manner, and will therefore not be disadvantaged in their ability to compete. More specifically, an ETP Holder could qualify for the proposed new Step Up Tier 3 by providing sufficient adding liquidity to satisfy the applicable proposed volume requirements. The Exchange also notes that the proposed Step Up Tier 3 would be similar to existing pricing tiers and applicable credits on the Exchange.[13]

Also, the Exchange does not believe that the proposed change will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets. In this regard, the Exchange notes that existing pricing tiers of other exchanges similarly provide for credits for market participants that provide certain levels of liquidity on those exchanges.[14]

Finally, 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 rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates 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 order routing practices, the Exchange believes that the degree to which fee 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 changes 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)[15] of the Act and subparagraph (f)(2) of Rule 19b–4[16] 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)[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–NYSEArca–2014–13 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2014–13. 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

[12] 15 U.S.C. 78f(b)(8).

[13] *See* supra note 11.

[14] *See, e.g.,* the ''Investor Support Program'' under NASDAQ Stock Market, LLC (''NASDAQ'') Rule 7014.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

[17] 15 U.S.C. 78s(b)(2)(B).

the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–13, and should be submitted on or before March 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–03008 Filed 2–11–14; 8:45 am]

**BILLING CODE 8011–01–P**

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71499; File No. SR–DTC–2014–01]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order of Accelerated Approval of Proposed Rule Change To Amend the Depository Trust Company Settlement Service Guide To Lower the Amount of the Maximum Net Debit Cap for an Affiliated Family of Participants and Make Other Related Changes

February 6, 2014.

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 January 24, 2014, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and, by this Order, approve the proposed rule change on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the DTC Settlement Service guide (the ''Service Guide'') to: (i) Lower the amount of the maximum Net Debit Cap for an affiliated family of Participants, and (ii) make other changes to the Service Guide, as more fully described below.[3]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. DTC 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

Introduction

By this filing, DTC seeks to amend the Service Guide to: (i) Lower the amount of the maximum Net Debit Cap[4] for an affiliated family of Participants (''Affiliated Family''),[5] and (ii) make other changes to the Service Guide as more fully described below.

Background

The Net Debit Cap is a risk management control under the Rules to limit the net debit balance of any Participant and of any Affiliated Family to no more than the amount of liquidity resources available to DTC to complete system-wide settlement in the event of a failure to settle by the largest Participant or Affiliated Family. Liquidity resources for DTC include cash deposits to the Participants Fund and a committed line of credit with a syndicate of commercial lenders.

Pursuant to the Rules each Participant must: (i) Make a Required Participants Fund Deposit in cash and (ii) purchase an amount of DTC Series A Preferred Stock (''DTC Preferred Stock'') (the ''Required Preferred Stock Investment'').[6] The aggregate of these amounts across all Participants is currently (i) $1.15 billion and (ii) $150 million, respectively, equal to an aggregate funded amount of $1.3 billion.[7] This amount, plus a committed line of credit of $1.9 billion,[8] provides DTC with $3.2 billion in liquidity resources. In accordance with the Rules, the maximum Net Debit Cap of any Participant and its Affiliated Family may not exceed this total amount of liquidity. The Net Debit Cap of each Participant is set at or below the maximum based on historic activity of the Participant; the aggregate amount of the Net Debit Caps of Participants in an Affiliated Family (the ''Aggregate Affiliated Family Net Debit Cap'')[9] is likewise limited by the amount of these liquidity resources. The maximum Net Debit Cap currently allowed by DTC for an individual Participant is $1.8 billion and the maximum Aggregate Affiliated Family Net Debit Cap is $3.0 billion.[10]

[3] Terms not defined herein have the meaning set forth in DTC's Rules & Procedures (the ''Rules''). Please note that DTC's Procedures include its service guides, including but not limited to the Settlement Service guide.

[4] Pursuant to Rule 1 the term: (a) ''Net Debit Cap'' of a Participant means an amount determined by the Corporation in the manner specified in the Procedures; provided, however, that the maximum Net Debit Cap of the Participant shall be the least of: (i) A maximum amount applicable to all Participants based on the liquidity resources of the Corporation, (ii) the Settling Bank Net Debit Cap applicable to such Participant or (iii) any other amount determined by the Corporation, in its sole discretion.

[5] Pursuant to Rule 1 the term ''Affiliated Family'' means each Participant that controls or is controlled by another Participant and each Participant that is under the common control of any Person. For purposes of this definition, ''control'' means the direct or indirect ownership of more than 50% of the voting securities or other voting interests of any Person.

[6] *See* DTC Rule 4, Section 2 *et seq.*

[7] Securities Exchange Act Release Nos. 41529 (Jun. 15, 1999), 64 FR 33333 (Jun. 22, 1999) (SR–DTC–1999–08); 43197 (Aug. 23, 2000), 65 FR 52459 (Aug. 29, 2000) (SR–DTC–2000–02); 54775 (Nov. 17, 2006), 71 FR 68662 (Nov. 27, 2006) (SR–DTC–2006–14); 59612 (Mar. 20, 2009), 74 FR 13488 (Mar. 27, 2009) (SR–DTC–2009–06); and 62567 (Dec. 16, 2010), 75 FR 80878 (Dec. 23, 2010) (SR–DTC–2010–14).

[8] Securities Exchange Act Release No. 69556 (May 10, 2013), 78 FR 28933 (May 16, 2013) (SR–DTC–2013–802).

[9] Pursuant to Rule 1, the term ''Aggregate Affiliated Family Net Debit Cap'' means the sum of the Net Debit Caps for the Participants that are part of an Affiliated Family in the manner specified in the Procedures; provided, however, that the maximum Aggregate Affiliated Family Net Debit Cap shall not exceed the total available liquidity resources of the Corporation.

[10] DTC maintains the maximum Aggregate Affiliated Family Net Debit Cap below its available

Continued

Proposed Rule Changes

For purposes of calculating liquidity resources to set the maximum Aggregate Affiliated Family Net Debit Cap, DTC has previously included the aggregate amount paid by Participants for the purchase of the DTC Preferred Stock ($150 million). (The DTC Preferred Stock itself constitutes capital of DTC.) Under the proposed change, DTC will no longer count the $150 million amount as a liquidity resource; it will account for this amount as capital, available for general business purposes. The maximum Aggregate Affiliated Family Net Debit Cap must therefore be reduced by $150 million, to reflect reduced cash liquidity resources available for settlement. Accordingly, the maximum Aggregate Affiliated Family Net Debit Cap of $3.0 billion will be reduced to $2.85 billion. In addition, for purposes of calculating Participants Fund deposits, $150 million will be subtracted from the base amount of the Participants Fund, currently $600 million which will, accordingly, be set at $450 million.

DTC proposes to revise the Service Guide to adjust references to the Aggregate Affiliated Family Net Debit Cap amount and reflect related changes to calculations of the Participants Fund.

In addition, the Service Guide contains a sample calculation of a Required Participants Fund Deposit which is no longer accurate. Rather than continue to provide an example which might require updates, DTC proposes to delete the example and, instead, set forth in the Service Guide the principles underlying the calculation of the Required Participants Fund Deposit and Required Preferred Stock Investment.[11]

DTC will also take this opportunity to: (i) Clarify procedures for payment of Required Participants Fund Deposits and the purchase of a Participant's Required Preferred Stock Investment, and (ii) make other clarifying technical changes to the Service Guide.

Implementation Timeframe

The effective date of the proposed Rule change will be announced via a DTC Important Notice.

2. Statutory Basis

By reducing the maximum Aggregate Affiliated Family Net Debit Cap, as described above, the proposed rule change will support the maintenance of adequate DTC liquidity resources available to complete system-wide settlement in the event of a failure to settle by the largest Participant or Affiliated Family. Therefore, DTC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC, in particular Section 17A(b)(3)(F)[12] of the Act which requires that DTC's Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC does not believe that the proposed Rule change will have any impact, or impose any burden, on competition, as DTC expects the proposed reduction of the maximum Aggregate Affiliated Family Net Debit Cap from $3.0 billion to $2.85 billion to have minimal impact on the ability of any affected Participant to settle securities transactions through DTC.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not yet been solicited or received with respect to this filing.

## III. 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 No. SR–DTC–2014–01 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–DTC–2014–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://dtcc.com/legal/sec-rule-filings.aspx*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–DTC–2014–01 and should be submitted on or before March 5, 2014.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Section 19(b)(2)(C)(i) of the Act[13] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

liquidity resources to adjust for the possibility that a Participant that is part of an Affiliated Family and fails to meet its end-of-day settlement obligation may also be (or be affiliated with) a lender under the line of credit.

[11] The Required Participants Fund Deposit is calculated by a formula using the concepts of: (i) A ''base'' amount, allocated among all Participants (based upon a sixty business-day rolling average of each Participant's intra-day net debit peaks), and (ii) an additional amount, allocated among the Affiliated Families that present the greatest liquidity risk to DTC. Calculation of the Required Preferred Stock Investment uses the methodology referred to in clause (i) of the preceding sentence, i.e., the same calculation as for the base amount of the Participants Fund. The current example in the Service Guide presents a Participants Fund (and DTC Preferred Stock) calculation including the base amount and the additional amount. The total base amount allocated among all Participants is shown in the example as $600 million, representing $450 million in cash deposits and $150 million in proceeds of the Required Preferred Stock Investments. Because funds invested in the DTC Preferred Stock will not be counted as a liquidity resource, the calculation of a Participants Required Deposit to the Participants Fund and Required Preferred Stock Investment will be described separately in the Service Guide, so the Required Preferred Stock Investment calculation will be removed from the Participants Fund section.

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 15 U.S.C. 78s(b)(2)(C)(i).

applicable to such organization. Here, the Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,[14] and the rules and regulations thereunder applicable to DTC. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[15] which requires, among other things, that the rules of a registered clearing agency ''are designed to promote the prompt and accurate clearance and settlement of securities transactions . . ., to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.'' [16]

As described above, DTC intends to no longer account for the $150 million paid by Participants for their Required Preferred Stock Investment as a liquidity resource, but as business capital only. Consequently, DTC is proposing this rule change in order to lower its Net Debit Cap for Aggregate Affiliated Families by the same amount so that the Aggregated Affiliated Family Net Debt Cap, and thus DTC's liquidity exposure in the event of an Affiliated Family default, does not exceed the actual amount of liquidity resources available to DTC. As such, the Commission finds this proposed rule change consistent with Section 17A(b)(3)(F) of the Act.[17]

Section 19(b)(2)(C)(iii) of the Act [18] allows the Commission to approve a proposed rule change earlier than 30 days after the date of publication of the notice of the proposed rule change in the **Federal Register** where the Commission finds good cause for doing so and publishes its reason. Here, as discussed above, DTC has more precisely allocated the $150 million in proceeds from the sale of its preferred stock solely for business capital purposes rather than for both business capital purposes and as a liquidity resource. Given that the financial stability of DTC and the safeguarding of securities in its custody or control or for which it is responsible is in the public interest, the Commission finds good cause for the accelerated approval of this proposed rule change under Section 19(b)(2)(C)(iii) of the Act [19] so that DTC can implement the proposed change to reflect DTC's reallocation of such proceeds, thus realigning the liquidity exposure presented to DTC by the failure of an Affiliated Family to meet its settlement obligations with the actual amount of liquidity resources available to DTC. If DTC were not able to make this proposed change immediately, the potential exists for DTC's liquidity exposure to exceed its liquidity resources, which could undermine the stability of DTC and the safety of the securities it maintains.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–DTC–2014–01) be, and it hereby is, *approved* on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–03006 Filed 2–11–14; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] *Id.*

[17] *Id.*

[18] 15 U.S.C. 78s(b)(2)(C)(iii).

[19] *Id.*

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### Amogear Inc.; Order of Suspension of Trading

February 10, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Amogear Inc. (''Amogear''), quoted under the ticker symbol AMOG, because the company has recently been the subject of spam emails touting the company's shares and because of potentially manipulative conduct in the trading of the company's shares.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

*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 8:30 a.m. EST on February 10, 2014 through 11:59 p.m. EST on February 24, 2014.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2014–03146 Filed 2–10–14; 11:15 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA–2014–0011–N–02]**

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). FRA is seeking public comments on its proposal to renew its PRA clearance to participate in the OMB program ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' This program was created to facilitate federal agencies' efforts to streamline the process to seek public feedback on service delivery. Current FRA clearance under this program expires July 31, 2014.

**DATES:** Comments must be received no later than April 14, 2014.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0593.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6497, or via email to Ms. Toone at *Kim.Toone@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** Executive Order 12862 (1993) (''Setting Customer Service Standards'') directed all Federal executive departments and agencies and

requested independent Federal agencies to provide service to ''customers'' that matches or exceeds the best service available in the private sector. *See also* Executive Order 13571 (2011) (''Streamlining Service Delivery and Improving Customer Service''). For purposes of these orders, ''customer'' means an individual who or entity that is directly served by a department or agency. FRA seeks renewed OMB approval of a generic clearance to collect qualitative feedback on our service delivery (i.e., the products and services that FRA creates to help consumers and businesses understand their rights and responsibilities, including Web sites, blogs, videos, print publications, and other content).

Below is a brief summary of the information collection activity that FRA will submit for clearance by OMB as required under the PRA:

*Title:* Generic Clearance for the Collection of qualitative Feedback on Agency Service Delivery OMB Control Number: 2130–0593.

*Status:* Regular Review.

*Type of Request:* Extension without change of a previously approved collection.

*Abstract:* This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It also allows feedback to contribute directly to the improvement of program management.

Improving agency programs requires ongoing assessment of service delivery, by which we mean systematic review of the operation of a program compared to a set of explicit or implicit standards, as a means of contributing to the continuous improvement of the program. The Agency will collect, analyze, and interpret information gathered through this generic clearance to identify strengths and weaknesses of current services and make improvements in service delivery based on feedback. The solicitation of feedback will target areas such as: timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency (if released, procedures outlined in Question 16 will be followed);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions;
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study;
- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future; and
- With the exception of information needed to provide remuneration for participants of focus groups and cognitive laboratory studies, personally identifiable information (PII) is collected only to the extent necessary and is not retained.

*Affected Public:* Individuals and Households, Business and Organizations, State, Local or Tribal Governments.

*Frequency of Submission:* Once per request.

*Total Annual Number of Respondents:* 2100.

*Total Estimated Responses:* 2100.

*Average Minutes per Response:* 10 minutes.

*Total Annual Burden Hours:* 354 hours.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on *February 6, 2014.*

**Rebecca Pennington,**

*Chief Financial Officer.*

[FR Doc. 2014–03054 Filed 2–11–14; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Intent To Prepare an Environmental Impact Statement for the Gateway Corridor Project From Saint Paul to Woodbury in Ramsey to Washington Counties, MN

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

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

**SUMMARY:** The Federal Transit Agency (FTA), as the lead federal agency, the Washington County Regional Railroad Authority (WCRRA), and the Metropolitan Council intend to prepare an Environmental Impact Statement (EIS) for the proposed Gateway Corridor project. The Gateway Corridor project is a planned transitway approximately 12 miles in length located in Ramsey and Washington Counties in the eastern part of the Twin Cities Metropolitan Area, Minnesota. The project is located in a corridor generally parallel to Interstate 94 (I–94) and will better connect downtown Saint Paul with its east side neighborhoods and the suburban cities of Maplewood, Landfall, Oakdale, Lake Elmo, and Woodbury. More broadly, the Gateway Corridor project will better connect the eastern Twin Cities Metropolitan Area to the regional transit network via the Union Depot multimodal hub in downtown Saint Paul. The project is also intended to serve and draw ridership from other portions of the metropolitan area, including portions of eastern Washington County and western St. Croix County (Wisconsin) to the east, Dakota County to the south, and the city of Minneapolis and Hennepin County to the west.

The EIS will be prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) and its implementing regulations with FTA as the lead agency. The purpose of this notice is to alert interested parties of the intent to prepare the EIS; to provide information on the nature of the proposed action and possible alternatives; to invite public participation in the EIS process,

including comments on the scope of the Draft EIS proposed in this notice; and to announce that public and agency scoping meetings will be conducted.

**DATES:** Written comments on the scope of the EIS, submitted by email or regular mail, must be received no later than April 16, 2014, and must be sent to Andy Gitzlaff. See **ADDRESSES** below for the location to which written comments may be submitted. Public scoping meetings to accept comments on the scope of the EIS will be held on the following dates:

- Monday, March 24, 2014, from 4:30 to 6:30 p.m., at Guardian Angels Catholic Church (8260 4th Street N, Oakdale, MN 55128).
- Tuesday, March 25, 2014, from 4:30 to 6:30 p.m., at Conway Recreation Center (2090 Conway Avenue, Saint Paul, MN 55119).

Comments will also be accepted at the Gateway Corridor Policy Advisory Committee meeting on Thursday, April 10, 2014, at 2:00 p.m. at Woodbury City Hall (8301 Valley Creek Road, Woodbury, MN 55125).

An interagency scoping meeting for agencies with interest in the project will be held on the following date:

- Thursday, March 20, 2014, from 10:00 a.m. to 12:00 noon, at the Kimley-Horn and Associates, Inc. office (2550 University Avenue West, Suite 238N, Saint Paul, MN 55114).

All the scoping meetings will be accessible to persons with disabilities. If special translation services or other special accommodations are needed, please contact Andy Gitzlaff (see **ADDRESSES** below) at least 48 hours prior to the meeting. A Scoping information packet, providing information on the Gateway Corridor project including project purpose and need, as well as alternatives proposed for evaluation in the EIS, will be available at public Scoping meetings, and will also be available on the project Web site: *http://www.thegatewaycorridor.com/*. Paper copies of Scoping materials may also be obtained from Andy Gitzlaff (see **ADDRESSES** below).

**ADDRESSES:** Andy Gitzlaff, Project Manager, Washington County Public Works Department, 11660 Myeron Road North, Stillwater, MN 55082, Phone: (651) 430–4300, Email: *Gateway Corridor@co.washington.mn.us,* Fax: (651) 430–4350.

**FOR FURTHER INFORMATION CONTACT:** Maya Sarna, Environmental Protection Specialist, FTA Headquarters, Washington, DC, Phone: 202–366–5811, Email: *maya.sarna@dot.gov*.

**SUPPLEMENTARY INFORMATION:**

**Scoping**

The FTA, WCRRA, and Metropolitan Council invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the EIS for the proposed Gateway Corridor project, including the project's purpose and need, the alternatives to be studied, the environmental impacts to be evaluated, and the evaluation methods to be used. Comments should address: (1) Feasible alternatives that may better achieve the project's purpose and need with fewer adverse impacts, and (2) any significant social, economic, or environmental issues relating to the alternatives.

NEPA ''scoping'' has specific objectives: To identify the significant environmental issues associated with alternatives to be examined in detail, while also limiting consideration of issues that are not truly significant. It is in the NEPA scoping process that potentially significant environmental impacts, which give rise to the need to prepare an EIS, should be identified. Transit projects may also generate environmental benefits that should also be discussed.

**Purpose and Need for the Project**

The purpose of the Gateway Corridor project is to provide transit service to meet existing and long-term regional mobility and local accessibility needs for businesses and the traveling public within the project area.

Five factors contribute to the need for the Gateway Corridor project:

- Limited transit service throughout the day and demand for more frequent service over a greater time span.
- Policy shift toward travel choices and multimodal investments.
- Population and employment growth, increasing access needs and travel demand.
- Needs of people who depend on transit.
- Local and regional objectives for growth.

**Project Location and Environmental Setting**

The project is located in Ramsey and Washington Counties, Minnesota. The character of the Gateway Corridor project area changes from an urban setting in downtown and the east side of Saint Paul to a transitional suburban/rural setting as it extends further east into the suburbs of Maplewood, Landfall, Oakdale, Lake Elmo, and Woodbury.

**Alternatives Analysis**

The Gateway Corridor Alternatives Analysis (AA) Study was completed by the Gateway Corridor Commission in February 2013. The AA Study evaluated a No-Build alternative and a range of Build alternatives, including a transportation system management alternative, a commuter rail alternative, light rail transit (LRT) alternatives, and bus rapid transit (BRT) alternatives on various alignments, including various alignments along East 7th Street in Saint Paul, and Hudson Road. All eight alternatives underwent detailed evaluation. At the end of the AA process, it was recommended that both BRT and LRT alternatives adjacent to Hudson Road move forward for consideration in the Draft EIS.

Information on the AA process will be available at scoping meetings/summarized in the Scoping Booklet. The results of an investigation of Gateway Corridor service on East 7th Street, as re-visited during early phases of Draft EIS scoping, will be made available for public review and comment. This will include the results of technical analyses used as the basis for decision-making by Gateway Corridor project technical and policy committees, supporting the findings made through the AA process that eliminated the East 7th Street alignment.

**Proposed Alternatives**

The following alternatives are currently under consideration for further study in the EIS:

*No-Build Alternative.* The No-Build Alternative serves as the NEPA baseline against which environmental effects of the Build alternatives are measured. It is defined as the 2030 transportation network with only those improvements already planned and programmed. The No-Build alternative does not include the Gateway Corridor project.

*LRT Alternative.* The LRT alternative would include several station stops between Union Depot in downtown Saint Paul and Manning Avenue in Woodbury, for a length of approximately 12 miles. LRT would generally travel in double-track, exclusive right-of-way (guideway) parallel to Interstate 94 (I–94) west of Interstate 694 (I–694), and adjacent to Hudson Road to the east. Between Woodbury Drive/Keats Avenue, there are two alignment options: One south of I–94 in vicinity of the frontage road/Hudson Road, and one north of I–94 along 4th Street North and Hudson Boulevard, before crossing I–94 near Woodbury Drive/Keats Avenue. The LRT Alternative would include tracks, stations and support facilities, as well as transit service for LRT and connecting bus routes.

*BRT Alternative.* The BRT alternative would generally include an exclusive, two-way busway in dedicated guideway. The length of the alignment would be approximately 12 miles, with several stations between Union Depot in downtown Saint Paul and Manning Avenue in Woodbury. BRT would generally travel parallel to I–94 to the west of I–694 and adjacent to Hudson Road to the east, similar to the LRT Alternative. The BRT Alternative would also include the same two alignment options between I–694 and Keats Avenue, as described above. It would include all facilities associated with the construction and operation of BRT, including right-of-way, travel lanes, stations, and support facilities, as well as transit service for BRT and connecting bus routes.

**Potential Impacts for Analysis**

The purpose of the EIS process is to study, in a public setting, the potentially significant effects of the proposed project on the quality of the human environment. Primary areas of investigation for this project may include, but might not be limited to: Transportation; land use and consistency with applicable plans; land acquisition and displacements; socioeconomic impacts; park and recreation resources; historic and cultural resources; environmental justice; visual and aesthetic qualities; air quality; noise and vibration; water quality, wetlands, and floodplains;, and ecosystems, including threatened and endangered species. Effects will be evaluated in the context of both short-term construction and long-term operation of the Gateway Corridor project. Direct project effects as well as indirect and cumulative effects on the environment will be addressed. The environmental analysis may reveal that the proposed project will not affect, or affect substantially, many of the primary areas of investigation. However, if any adverse impacts are identified, measures to avoid, minimize, or mitigate those adverse effects will be proposed.

**Procedures for Public and Agency Involvement**

The regulations implementing NEPA call for public involvement in the EIS Process. 23 U.S.C. 139 requires that FTA, WCRRA, and the Metropolitan Council do the following: (1) Extend an invitation to other federal and non-federal agencies and Native American tribes that may have an interest in the proposed project to become ''participating agencies;'' (2) provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for the proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. An invitation to become a participating or cooperating agency, with Scoping materials appended, will be extended to other federal and non-federal agencies and Native American tribes that may have an interest in the proposed project. It is possible that FTA, WCRRA, and the Metropolitan Council will not be able to identify all federal and non-federal agencies and Native American tribes that may have such an interest. Any federal or non-federal agency or Native American tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under **ADDRESSES**.

A comprehensive public involvement program for public and agency involvement has been developed for the project and is available on the project Web site. The public involvement program includes a full range of activities including maintaining the project Web site and outreach to local officials, community and civic groups, and the general public.

**Paperwork Reduction**

The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with principles of economy and efficiency in government, it is FTA policy to limit insofar as possible distribution of complete printed sets of environmental documents. Accordingly, unless a specific request for a complete printed set of environmental documents is received before the document is printed, at the latest, FTA and its grantees will distribute only the executive summary of environmental documents in printed form together with a compact disc (CD) that contains the complete environmental document. A complete printed set of the environmental documents will be available for review at the grantee's offices and elsewhere; an electronic copy of the complete environmental document will also be available on the grantee's Web site.

**Marisol Simon,**

*Regional Administrator.*

[FR Doc. 2014–03050 Filed 2–11–14; 8:45 am]

BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[NHTSA–2014–0020]**

### Reports, Forms, and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on November 20, 2013 (78 FR 69744).

**DATES:** Comments must be received on or before March 14, 2014.

**FOR FURTHER INFORMATION CONTACT:** David Bonelli, Office of Chief Counsel, NCC–113, telephone (202) 366–1834, fax (202) 366–3820; NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

*Title:* Designation of Agent for Service of Process.

*OMB Control Number:* 2127–0040.

*Requested Expiration Date of Approval:* Three years from the approval date.

*Type of Request:* Extension of a previously approved collection.

*Affected Public:* Business or other for-profit.

*Form Number:* N/A.

*Abstract:* This collection of information applies to motor vehicle and motor vehicle equipment manufacturers located outside of the United States (''foreign manufacturers''). Section 110(e) of the National Traffic and Motor Vehicle Safety Act of 1966 (49 U.S.C. 30164) requires a foreign manufacturer offering a motor vehicle or motor vehicle equipment for importation into the United States to designate a permanent resident of the United States as its agent upon whom service of notices and processes may be made in administrative and judicial proceedings. These designations are required to be filed with NHTSA. NHTSA requires this information in case it needs to advise a foreign manufacturer of a safety related defect

in its products so that the manufacturer can, in turn, notify purchasers and correct the defect. This information also enables NHTSA to serve a foreign manufacturer with all administrative and judicial processes, notices, orders, decisions and requirements.

When NHTSA amended the regulation implementing that statutory requirement, codified at 49 CFR Part 551, subpart D, NHTSA included an appendix containing a suggested designation form for use by foreign manufacturers and their agents. The purpose of the suggested designation format was to simplify the information collection and submission process, and thereby reduce the burden imposed on each covered manufacturer by 49 CFR Part 551, subpart D. To further streamline the information collection process, NHTSA has set up a customer Web site that may be accessed at *http://www.nhtsa.dot.gov/cars/rules/manufacture/agent/customer.html.*

*Estimated Annual Burden:* 120 hours.

*Estimated Number of Respondents:* 240 respondents.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

*The Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**David Bonelli,**

*Attorney-Advisor, Legislation and General Law.*

[FR Doc. 2014–03004 Filed 2–11–14; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2013–0137]**

### Visual-Manual NHTSA Driver Distraction Guidelines for Portable and Aftermarket Electronic Devices

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Announcement of public meeting.

**SUMMARY:** Through this notice, NHTSA is announcing a public meeting to bring together vehicle manufacturers and suppliers, portable and aftermarket device manufacturers, portable and aftermarket device operating system providers, cellular service providers, industry associations, ''app'' developers, researchers, and consumer groups to discuss technical issues regarding the agency's development of Phase 2 Driver Distraction Guidelines for portable and aftermarket devices.

**DATES:** *Public Meeting.* NHTSA will hold a public meeting on March 12, 2014, in Washington, DC. The meeting will start at 1 p.m. and continue until 5 p.m., local time. If you would like to attend the public meeting, please contact the person identified under **FOR FURTHER INFORMATION CONTACT** no later than March 3, 2014. If you would like to present technical remarks, please contact the person identified under **FOR FURTHER INFORMATION CONTACT** no later than March 7, 2014.

*Remote Viewing.* Remote viewing will be available via web, please check *http://www.distraction.gov* the day before the meeting on March 11, 2014 for instructions on how to connect.

*Written comments.* Please submit all written comments not later than May 12, 2014.

**ADDRESSES:** *Meeting.* The March 12, 2014, public meeting will be held at the U.S. Department of Transportation, West Building Ground Floor, Media Center—Room W11–130, 1200 New Jersey Avenue SE., Washington, DC 20590. This facility is accessible to individuals with disabilities.

*Written comments.* You may submit comments to the docket number NHTSA–2013–0137 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

*Instructions:* All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: (202) 366–9826.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

*Confidential Business Information:* If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

**FOR FURTHER INFORMATION CONTACT:** If you have questions about registering for the public meeting, please contact Dr. Julie Kang, U.S. Department of Transportation, National Highway Traffic Safety Administration, email: *julie.kang@dot.gov;* telephone: (202)

366–5677; facsimile: (202) 366–8546; mail: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

For questions about technical issues concerning the Phase 2 Driver Distraction Guidelines, you may contact Dr. Christopher Monk, U.S. Department of Transportation, National Highway Traffic Safety Administration, email: *chris.monk@dot.gov;* telephone: (202) 366–5195, facsimile: (202) 366–8546; mail: National Highway Traffic Safety Administration, 1200 New Jersey Avenue Southeast, West Building, Washington, DC 20590. See **SUPPLEMENTARY INFORMATION** for more detail.

**SUPPLEMENTARY INFORMATION:** Registration is necessary for all attendees. Please provide the following information to Dr. Kang no later than March 3, 2014: Name and affiliation, and please indicate whether you require accommodations such as a sign language interpreter or translator. Space is limited, so advanced registration is highly encouraged. As noted in Public Meeting Procedures, attendees will be given the opportunity to offer technical remarks but there will not be time for attendees to make audio-visual presentations during the meeting. Attendees wishing to make technical remarks should register with Dr. Kang by March 7, 2014. Note: we may not be able to accommodate all attendees who wish to make oral remarks. Should it be necessary to cancel the meeting due to inclement weather or other emergency, NHTSA will take all available measures to notify registered participants.

You may learn more about the current (Phase 1) NHTSA Guidelines by visiting the Department of Transportation's Web site on distracted driving, *www.distraction.gov,* NHTSA's Web site, *www.nhtsa.gov,* or by searching the public docket (NHTSA–2010–0053) at *www.regulations.gov.*

## Background

NHTSA is concerned about the effects of driver distraction on motor vehicle safety. Crash data show that 17 percent (an estimated 899,000) of all police-reported crashes involved some type of driver distraction in 2010. Of those 899,000 crashes, distraction by a device or control integral to the vehicle was reported in 26,000 crashes (3% of the distraction-related police-reported crashes).

In June 2012, NHTSA released a ''Blueprint for Ending Distracted Driving,'' summarizing steps that NHTSA intends to take to eliminate crashes attributable to driver distraction. This document was an update of the ''Overview of the National Highway Traffic Safety Administration's Driver Distraction Program'' that was released in April 2010 (both documents available at *www.distraction.gov*).

One of the steps called for in both of these documents is the development of nonbinding, voluntary guidelines for minimizing the distraction potential of in-vehicle and portable devices. Since 2010, NHTSA has stated that guidelines would be developed in three phases. The first phase covers visual-manual interfaces of electronic devices installed in vehicles as original equipment and was released for public comment in February 2012. The final version of the Phase 1 Distraction Guidelines was published in April 2013. The second phase will include visual-manual interfaces of portable and aftermarket devices. NHTSA is currently developing its proposal and this public meeting will inform that proposal. The third phase will expand these guidelines to include auditory-vocal interfaces.

In 2013, the Consumer Electronics Association (CEA) initiated a Working Group to develop industry-based recommended practices for portable electronic devices used by drivers in vehicles (formally named R6 WG18 Driver-Device Interface Working Group). The voluntary recommended practices are intended to address the issue of driver distraction related to the use of portable electronic devices. The recommendations are intended to be used by consumers, portable electronic device manufacturers, software developers, and any other interested parties to improve the safety of driving and non-driving-related task performance. NHTSA was invited to participate in this activity and has sent liaisons to the working group meetings since its inception. To aid this process, NHTSA has provided explanations and the rationales for aspects of NHTSA's Visual-Manual Driver Distraction Guidelines, as well as participated in discussions regarding applying those basic principles to the complex multi-part ecosystem of portable electronic devices. The working group has stated that it will use the principles that NHTSA established with its Phase 1 Guidelines to guide its work.

## Driver Distraction Guidelines

The NHTSA Driver Distraction Guidelines are meant to promote safety by discouraging the introduction of excessively distracting devices in vehicles. On April 26, 2013, NHTSA issued the first phase of these guidelines.[1] The Phase 1 Guidelines cover original equipment (OE) in-vehicle (i.e., integrated) electronic devices that are operated by the driver through visual-manual means (i.e., the driver looks at a device, manipulates a device-related control with his or her hand, and/or watches for visual feedback from the device). The Phase 2 Guidelines will apply to portable and aftermarket devices that are operated through visual-manual means and will be based on the same general principles as the Phase 1 Guidelines, namely:

- The driver's eyes should usually be looking at the road ahead,
- The driver should be able to keep at least one hand on the steering wheel,
- Any task performed by a driver should be interruptible at any time,
- The driver should control the human-machine interface and not vice versa, and
- Displays should be easy for the driver to see.

## Public Meeting

To support NHTSA's development of the Phase 2 Distraction Guidelines, NHTSA is hosting a public meeting to bring together vehicle manufacturers and suppliers, portable and aftermarket device manufacturers, portable and aftermarket device operating system providers, cellular service providers, industry associations, ''app'' developers, researchers, and consumer groups to discuss technical issues regarding the agency's development of Phase 2 Driver Distraction Guidelines for portable and aftermarket devices. NHTSA will present an overview of the Phase 1 Driver Distraction Guidelines as background for its presentation on the key technical issues in Phase 2. Industry associations will have the opportunity to present their own efforts to produce guidelines or recommended practices for portable and aftermarket devices that could be used by drivers inside the vehicle. The meeting will also include three panels of invited experts addressing the following technical topics: (1) vehicle and portable/aftermarket device pairing, (2) driver mode, and (3) advanced technologies such as heads-up displays and those that automatically distinguish between devices used by drivers and passengers.

The meeting will be open to the public, but participation in the expert panels will be limited and by invitation only in order to ensure that all of the topics can be addressed in the time available. However, the floor will be open to those attendees who pre-registered to offer brief technical

[1] 78 FR 24817 (Apr. 26, 2013).

comments. Anyone, including those persons who wishing to supplement their oral comments, may submit written comments.

**Draft Agenda**

1. Welcome and Opening Remarks
2. Technical Background for the Phase 2 Distraction Guidelines—NHTSA
a. Phase 1 Distraction Guidelines Overview
b. Technical Approach to the Phase 2 Distraction Guidelines
3. Industry Efforts—Industry Associations
4. Panel 1: Pairing
a. Introduction of the topic—NHTSA
b. Invited technical experts on pairing
c. Questions and discussion by NHTSA and panel members, and remarks from attendees
5. Break
6. Panel 2: Driver Mode
a. Introduction of the topic—NHTSA
b. Invited technical experts on driver mode
c. Questions and discussion by NHTSA and panel members, and remarks from attendees
7. Panel 3: Advanced Technologies
a. Introduction of the topic—NHTSA
b. Invited technical experts on advanced technologies
c. Questions and discussion by NHTSA and panel members, and remarks from attendees
8. Wrap-Up—NHTSA

**Panel Topics**

NHTSA has identified three major areas related to portable and aftermarket devices that the agency would like to discuss at the public meeting. The first topic is that of pairing devices with the vehicle's electronics, whether through wired or wireless connection. Many newer vehicles already offer this capability and NHTSA sees it as an important topic to address. The second topic is related to unpaired devices, and the implementation of ''driver mode'' on the device. Driver mode is a simplified user interface that is intended to minimize distraction experienced by a driver using that device. Finally, a third topic relates to a broader set of questions surrounding advanced technologies, including heads-up displays and the capability of portable and aftermarket devices and the vehicle system to automatically distinguish whether a device is located in the driver's position or a passenger's position. The invited panelists will be asked to speak to the following topics and related issues.

1. Paired—NHTSA wants to hear views on using pairing of portable and aftermarket devices as a means for focusing the drivers' interactions through the in-vehicle controls and display system. NHTSA is also interested in learning about new developments in the pairing or connecting of devices with the vehicle's electronics, and how pairing or other similar technologies that connect devices and the vehicle will progress into the marketplace.

2. Driver Mode—NHTSA would like input on current and future driver mode systems. Specifically, what are the potential barriers and proposed solutions faced by mobile carriers, operating system providers, and application developers to adapt an overall system where all applications available in driver mode offer a simplified user interface? NHTSA is interested in any general information on the usage rates of current driver mode implementations. In addition, NHTSA would like to hear about any driver modes that are automatically initiated when the vehicle is moving.

3. Advanced Technologies—NHTSA is eager to learn about new developments in portable device technologies that use advanced display features such as heads-up displays and how they relate to the scope of the Phase 2 Guidelines. NHTSA is also interested in technology to determine the location of portable and aftermarket devices within the vehicle, thereby automatically determining whether the device is operated by the driver versus passengers while driving.

The panels will be made up of invited technical experts from vehicle manufacturers and suppliers, portable and aftermarket device manufacturers, portable and aftermarket device operating system providers, cellular service providers, industry associations, or ''app'' developers that can provide information and insight on the selected topic. It is envisioned that each panel will have three speakers, each speaking for about 10 minutes, with an additional 20 minutes for discussion between panelists and NHTSA, and prepared technical remarks from attendees.

Background information concerning the Driver Distraction Guidelines in particular and the problem of distracted driving in general is available at *http://www.distraction.gov/.*

*Public Meeting Procedures*

NHTSA will conduct the meeting informally. Thus, technical rules of evidence will not apply. We will arrange for a written transcript of the meeting. For planning purposes, attendees that wish to make technical remarks after each panel should anticipate speaking for approximately five minutes, although we may need to shorten that time if there is a large number of people wishing to provide remarks. Once we learn how many people have registered to provide technical remarks, we will allocate an appropriate amount of time to each speaker, allowing time for necessary breaks. We request that you bring three copies of your technical remarks or other material to the public meeting. To accommodate as many speakers as possible, speakers will not be able to use audio-visual aids or computer slideshows. Attendees wishing to provide supplementary written information should submit it to the address given above for written comments by the May 12, 2014, deadline for those comments. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public meeting.

Issued in Washington, DC under authority delegated by 49 CFR 1.95.

**Daniel C. Smith,**

*Senior Associate Administrator for Vehicle Safety.*

[FR Doc. 2014–03064 Filed 2–7–14; 4:15 pm]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2013–0002 (Notice No. 14–1)]**

### Information Collection Activities

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on certain information collections pertaining to hazardous materials transportation for which PHMSA intends to request renewal from the Office of Management and Budget (OMB).

**DATES:** Interested persons are invited to submit comments on or before April 14, 2014.

**ADDRESSES:** You may submit comments identified by the docket number (PHMSA–2010–0223) by any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the

online instructions for submitting comments.

- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and docket number or Regulation Identification Number (RIN) for this notice. Internet users may access comments received by DOT at: *http://www.regulations.gov*. Note that comments received will be posted without change to: *http://www.regulations.gov* including any personal information provided.

Requests for a copy of an information collection should be directed to Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

**FOR FURTHER INFORMATION CONTACT:** Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

**SUPPLEMENTARY INFORMATION:** Section 1320.8 (d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish a notice of the approval in the **Federal Register**.

PHMSA requests comments on the following information collections:

*Title:* Requirements for Cargo Tanks.

*OMB Control Number:* 2137–0014.

*Summary:* This information collection consolidates and describes the information collection provisions in parts 178 and 180 of the HMR involving the manufacture, qualification, maintenance, and use of all specification cargo tank motor vehicles. It also includes the information collection and recordkeeping requirements for persons who are engaged in the manufacture, assembly, requalification, and maintenance of DOT specification cargo tank motor vehicles. The types of information collected include:

(1) Registration Statements: Cargo tank manufacturers and repairers, and cargo tank motor vehicle assemblers are required to be registered with DOT by furnishing information relative to their qualifications to perform the functions in accordance with the HMR. The registration statements are used to identify these persons in order for DOT to ensure they possess the knowledge and skills necessary to perform the required functions, and that they are performing the specified functions in accordance with the applicable regulations.

(2) Requalification and maintenance reports: These reports are prepared by persons who requalify or maintain cargo tanks. This information is used by cargo tank owners, operators and users, and DOT compliance personnel to verify that the cargo tanks are requalified, maintained, and are in proper condition for the transportation of hazardous materials.

(3) Manufacturers' data reports, certificates and related papers: These reports are prepared by cargo tank manufacturers and certifiers, and are used by cargo tank owners, operators, users and DOT compliance personnel to verify that a cargo tank motor vehicle was designed and constructed to meet all requirements of the applicable specification.

*Affected Public:* Manufacturers, assemblers, repairers, requalifiers, certifiers, and owners of cargo tanks.

*Annual Reporting and Recordkeeping Burden:*

*Number of Respondents:* 41,366.

*Total Annual Responses:* 132,600.

*Total Annual Burden Hours:* 101,507.

*Frequency of Collection:* On occasion.

*Title:* Hazardous Materials Incident Reports.

*OMB Control Number:* 2137–0039.

*Summary:* This collection is applicable upon occurrence of incidents as prescribed in §§ 171.15 and 171.16. A Hazardous Materials Incident Report, DOT Form F 5800.1, must be completed by a person in physical possession of a hazardous material at the time a hazardous material incident occurs in transportation, such as a release of materials, serious accident, evacuation or closure of a main artery. Incidents meeting criteria in § 171.15 also require a telephonic report. This information collection enhances the Department's ability to evaluate the effectiveness of its regulatory program, determine the need for regulatory changes, and address emerging hazardous materials transportation safety issues. The requirements apply to all interstate and intrastate carriers engaged in the transportation of hazardous materials by rail, air, water, and highway.

*Affected Public:* Shippers and carriers of hazardous materials.

*Annual Reporting and Recordkeeping Burden:*

*Number of Respondents:* 1,781.

*Total Annual Responses:* 17,810.

*Total Annual Burden Hours:* 23,746.

*Frequency of collection:* On occasion.

*Title:* Flammable Cryogenic Liquids.

*OMB Control Number:* 2137–0542.

*Summary:* Provisions in § 177.840(a)(2) specify certain safety procedures and documentation requirements for drivers of motor vehicles transporting flammable cryogenic liquids. This information allows the driver to take appropriate remedial actions to prevent a catastrophic release of the flammable cryogenics should the temperature of the material begin to rise excessively or if the travel time will exceed the safe travel time. These requirements are intended to ensure a high level of safety when transporting flammable cryogenics due to their extreme flammability and high compression ratio when in a liquid state.

*Affected Public:* Carriers of cryogenic materials.

*Annual Reporting and Recordkeeping Burden:*

*Total Respondents:* 65.

*Total Annual Responses:* 18,200.

*Total Annual Burden Hours:* 1,213.

*Frequency of collection:* On occasion.

*Title:* Container Certification Statement.

*OMB Control Number:* 2137–0582.

*Summary:* Shippers of explosives, in freight containers or transport vehicles by vessel, are required to certify on shipping documentation that the freight container or transport vehicle meets minimal structural serviceability requirements. This requirement is intended to ensure an adequate level of safety for transport of explosives aboard vessel and consistency with similar requirements in international standards.

*Affected Public:* Shippers of explosives in freight containers or transport vehicles by vessel.

*Annual Reporting and Recordkeeping Burden:*

*Annual Respondents:* 650.

*Annual Responses:* 890,000.

*Annual Burden Hours:* 14,908.

*Frequency of collection:* On occasion.

*Title:* Response Plans for Shipments of Oil.

*OMB Control Number:* 2137–0591.

*Summary:* In recent years, several major oil discharges damaged the marine environment of the United States. Under authority of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, PHMSA issued regulations in 49 CFR part 130 that require preparation of written spill response plans.

*Affected Public:* Carriers that transport oil in bulk, by motor vehicle or rail.

*Annual Reporting and Recordkeeping Burden:*

*Annual Respondents:* 8,000.

*Annual Responses:* 8,000.

*Annual Burden Hours:* 10,560.

*Frequency of collection:* On occasion.

*Title:* Hazardous Materials Security Plans.

*OMB Control Number:* 2137–0612.

*Summary:* To assure public safety, shippers and carriers must take reasonable measures to plan and implement procedures to prevent unauthorized persons from taking control of, or attacking, hazardous materials shipments. Part 172 of the HMR requires persons who offer or transport certain hazardous materials to develop and implement written plans to enhance the security of hazardous materials shipments. The security plan requirement applies to shipments of: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) more than 25 kg (55 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material; (3) more than 1 L (1.06 qt) per package of a material poisonous by inhalation in hazard zone A; (4) a shipment of hazardous materials in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gal) for liquids or gases, or greater than 13.24 cubic meters (468 cubic feet) for solids; (5) a shipment that requires placarding; and (6) select agents. Select agents are infectious substances identified by the Centers for Disease Control and Prevention (CDC) as materials with the potential to have serious consequences for human health and safety if used illegitimately. A security plan will enable shippers and carriers to reduce the possibility that a hazardous materials shipment will be used as a weapon of opportunity by a terrorist or criminal.

*Affected Public:* Shippers and carriers of hazardous materials in commerce.

*Annual Reporting and Recordkeeping Burden:*

*Number of Respondents:* 54,999.

*Total Annual Responses:* 54,999.

*Total Annual Burden Hours:* 427,719.

*Frequency of collection:* On occasion.

*Title:* Inspection and Testing of Meter Provers.

*OMB Control Number:* 2137–0620.

*Summary:* This information collection and recordkeeping burden results from the requirements pertaining to the use, inspection, and maintenance of mechanical displacement meter provers (meter provers) used to check the accurate flow of liquid hazardous materials into bulk packagings, such as portable tanks and cargo tank motor vehicles, under the HMR. These meter provers are used to ensure that the proper amount of liquid hazardous materials is being loaded and unloaded involving bulk packagings, such as cargo tanks and portable tanks. These meter provers consist of a gauge and several pipes that always contain small amounts of the liquid hazardous material in the pipes as residual material, and, therefore, must be inspected and maintained in accordance with the HMR to ensure they are in proper calibration and working order. These meter provers are not subject to the specification testing and inspection requirements in part 178. However, these meter provers must be visually inspected annually and hydrostatic pressure tested every five years in order to ensure they are properly working as specified in § 173.5a of the HMR. Therefore, this information collection requires that:

(1) Each meter prover must undergo and pass an external visual inspection annually to ensure that the meter provers used in the flow of liquid hazardous materials into bulk packagings are accurate and in conformance with the performance standards in the HMR.

(2) Each meter prover must undergo and pass a hydrostatic pressure test at least every five years to ensure that the meter provers used in the flow of liquid hazardous materials into bulk packagings are accurate and in conformance with the performance standards in the HMR.

(3) Each meter prover must successfully complete the test and inspection and must be marked in accordance with §§ 180.415(b) and 173.5a.

(4) Each owner must retain a record of the most recent visual inspection and pressure test until the meter prover is requalified.

*Affected Public:* Owners of meter provers used to measure liquid hazardous materials flow into bulk packagings such as cargo tanks and portable tanks.

*Annual Reporting and Recordkeeping Burden:*

*Number of Respondents:* 50.

*Total Annual Responses:* 250.

*Total Annual Burden Hours:* 175.

*Frequency of collection:* On occasion.

*Title:* Requirements for United Nations (UN) Cylinders.

*OMB Control Number:* 2137–0621.

*Summary:* This information collection and recordkeeping burden is the result of efforts to amend the HMR to adopt standards for the design, construction, maintenance and use of cylinders and multiple-element gas containers (MEGCs) based on the standards contained in the United Nations (UN) Recommendations on the Transport of Dangerous Goods. Aligning the HMR with the UN Recommendations promotes flexibility, permits the use of technological advances for the manufacture of the pressure receptacles, provides for a broader selection of pressure receptacles, reduces the need for special permits, and facilitates international commerce in the transportation of compressed gases. Information collection requirements address domestic and international manufacturers of cylinders that request approval by the approval agency for cylinder design types. The approval process for each cylinder design type includes review, filing, and recordkeeping of the approval application. The approval agency is required to maintain a set of the approved drawings and calculations for each design it reviews and a copy of each initial design type approval certificate approved by the Associate Administrator for not less than 20 years.

*Affected Public:* Fillers, owners, users, and retesters of UN cylinders.

*Annual Reporting and Recordkeeping Burden:*

*Number of Respondents:* 50.

*Total Annual Responses:* 150.

*Total Annual Burden Hours:* 900.

*Frequency of collection:* On occasion.

Dated: February 6, 2014.

**Charles E. Betts,**

*Director, Standards and Rulemaking Division.*

[FR Doc. 2014–03047 Filed 2–11–14; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF THE TREASURY

### Proposed Collection; Comment Request

**AGENCY:** Departmental Offices; Department of the Treasury.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on the revision of an information collection that is to be proposed for approval by the Office of Management and Budget. The Office of International Affairs of the Department of the Treasury is soliciting comments concerning Treasury International Capital Form SLT, Aggregate Holdings of Long-Term Securities by U.S. and Foreign Residents. The Current Actions below make electronic filing mandatory.

**DATES:** Written comments should be received on or before April 14, 2014 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5422, 1500 Pennsylvania Avenue NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by email (*comments2TIC@treasury.gov*), FAX (202–622–2009) or telephone (202–622–1276).

**FOR FURTHER INFORMATION CONTACT:** Copies of the proposed forms and instructions are available on the Treasury's TIC Forms Web page, *http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms.aspx.* Requests for additional information should be directed to Mr. Wolkow.

**SUPPLEMENTARY INFORMATION:**

*Title:* Treasury International Capital Form SLT, Aggregate Holdings of Long-Term Securities by U.S. and Foreign Residents.

*OMB Control Number:* 1505–0235.

*Abstract:* Form SLT is part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR part 128), and is designed to collect timely information on international portfolio capital movements. Form SLT is a monthly report on cross-border portfolio investment in long-term marketable securities by U.S. and foreign residents. This information is used by the U.S. Government in the formulation of international financial and monetary policies and for the preparation of the U.S. balance of payments accounts and the U.S. international investment position.

*Current Actions:* (a) Electronic filing of the TIC Form SLT report will be mandatory. More specifically, the last part of Section II.H, Submission of Reports, in the instructions will say, in effect, that the TIC Form SLT report must be submitted electronically by using the Federal Reserve System's ''Reporting Central'' electronic submission system. It is easy to use, secure, provides confirmation of the receipt of the data, and performs a number of validity checks of your file format. The SLT report can no longer be filed by mail or Fax and can no longer be reported on computer or other paper. Because it usually takes at least a month to set up a ''Reporting Central'' account, respondents may wish to obtain more information soon on ''Reporting Central'' by contacting the Federal Reserve Bank of New York at 212–720–6300. (b) The glossaries for all Treasury International Capital (''TIC'') reports will be consolidated into a single document which will provide more consistency across the TIC system. As a result, the TIC SLT reporting instructions will not include a glossary but will point to the separate consolidated Glossary document on the Treasury Web site. [**Note:** some other clarifications may be made in the instructions and glossary.] (c) These changes will be effective beginning with the reports as of June 30, 2014.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organizations. Form SLT (1505–0235).

*Estimated Number of Respondents:* 150.

*Estimated Average Time per Respondent:* Average 11.4 hours per respondent per filing. The estimated average burden per respondent varies widely, from about 17 hours per filing for a U.S.-resident custodian filing Part A and Part B to about 6.5 hours for a U.S.-resident issuer or U.S.-resident end-investor filing Part B.

*Estimated Total Annual Burden Hours:* 20,520 hours, based on 12 reporting periods per year.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Form SLT is necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

**Dwight Wolkow,**

*Administrator, International Portfolio Investment Data Reporting Systems.*

[FR Doc. 2014–03028 Filed 2–11–14; 8:45 am]

**BILLING CODE 4810–25–P**

## DEPARTMENT OF THE TREASURY

### Proposed Collections; Comment Requests

**AGENCY:** Departmental Offices; Department of the Treasury.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for extension approval by the Office of Management and Budget. The Office of International Affairs of the Department of the Treasury is soliciting comments concerning extension without change of the following forms: Foreign Currency Form FC–1 (OMB No. 1505–0012), Weekly Consolidated Foreign Currency Report of Major Market Participants; Form FC–2 (OMB No. 1505–0010); Monthly Consolidated Foreign Currency Report of Major Market Participants; Form FC–3 (OMB No. 1505–0014), Quarterly Consolidated Foreign Currency Report. The reports are mandatory.

**DATES:** Written comments should be received on or before April 14, 2014 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Gregory B. Seel, Markets Room, Department of the Treasury, Room 1328, 1500 Pennsylvania Avenue NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Seel by email (*gregory.seel@treasury.gov*), FAX (202–622–2021) or telephone (202–622–5078).

**FOR FURTHER INFORMATION CONTACT:** Copies of the proposed forms and instructions are available on the Federal Reserve Bank of New York's Web site, in the section for Banking Reporting Forms and Instructions, on the Web pages for the TFC–1, TFC–2 and TFC–3 forms, for example at: *http://www.ny.frb.org/banking/reportingforms/TFC_1.html.* Requests for additional information should be directed to Mr. Seel.

**SUPPLEMENTARY INFORMATION:**

*Title:* Weekly Consolidated Foreign Currency Report of Major Market Participants, Foreign Currency Form FC–1.

OMB Control Number: 1505–0012.

*Title:* Monthly Consolidated Foreign Currency Report of Major Market Participants, Foreign Currency Form FC–2.

OMB Control Number: 1505–0010.

*Title:* Quarterly Consolidated Foreign Currency Report, Foreign Currency Form FC–3.

OMB Control Number: 1505–0014.

*Abstract:* The filing of Foreign Currency Forms FC–1, FC–2, and FC–3 is pursuant to (31 U.S.C. 5315, which directs the Secretary of the Treasury to prescribe regulations (31 CFR part 128, Subpart C), requiring reports on foreign currency transactions conducted by a United States person or a foreign person controlled by a United States person. The forms collect data on the foreign exchange spot, forward, futures, and options markets from all significant market participants.

*Current Actions:* None. No changes in the forms or instructions will be made.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:*

Foreign Currency Form FC–1: 22 respondents.

Foreign Currency Form FC–2: 22 respondents.

Foreign Currency Form FC–3: 38 respondents.

*Estimated Average Time per Response:*

Foreign Currency Form FC–1: 48 minutes (0.8 hours) per response.

Foreign Currency Form FC–2: 3 hours 36 minutes (3.6 hours) per response.

Foreign Currency Form FC–3: Eight (8) hours per response.

*Estimated Total Annual Burden Hours:*

Foreign Currency Form FC–1: 915 hours, based on 52 reporting periods per years.

Foreign Currency Form FC–2: 950 hours, based on 12 reporting period per year.

Foreign Currency Form FC–3: 1,216 hours, based on 4 reporting periods per year.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Foreign Currency Forms FC–1, FC–2, and FC–3 are necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimates of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

**Gregory B. Seel,**

*Financial Analyst, Markets Room, U.S. Department of the Treasury.*

[FR Doc. 2014–03026 Filed 2–11–14; 8:45 am]

BILLING CODE 4810–25–P

## DEPARTMENT OF THE TREASURY

### Proposed Collections; Comment Requests

**AGENCY:** Departmental Offices; Department of the Treasury.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on the revision of an information collection that is to be proposed for approval by the Office of Management and Budget. The Office of International Affairs of the Department of the Treasury is soliciting comments concerning Treasury International Capital Form S, Purchases and Sales of Long-Term Securities by Foreign Residents. The Current Actions below raise the exemption level for reporting.

**DATES:** Written comments should be received on or before April 14, 2014 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5422, 1500 Pennsylvania Avenue NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by email (*comments2TIC@treasury.gov*), FAX (202–622–2009) or telephone (202–622–1276).

**FOR FURTHER INFORMATION CONTACT:** Copies of the proposed forms and instructions are available on the Treasury's TIC Forms Web page, *http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms.aspx.* Requests for additional information should be directed to Mr. Wolkow.

**SUPPLEMENTARY INFORMATION:**

*Title:* Treasury International Capital Form S, Purchases and Sales of Long-term Securities by Foreign-Residents.

*OMB Control Number:* 1505–0001

*Abstract:* Form S is part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR part 128), and is designed to collect timely information on international portfolio capital movements. Form S is a monthly report used to cover transactions in long-term marketable securities undertaken *directly* with foreigners by banks, other depository institutions, brokers, dealers, underwriting groups, funds and other individuals and institutions. This information is used by the U.S. Government in the formulation of international financial and monetary policies and for the preparation of the U.S. balance of payments accounts and the U.S. international investment position.

*Current Actions:* (a) The exemption level for total reportable transactions will be raised from $50 million to $350 million. More specifically, an institution must file the TIC Form S monthly if the consolidated total of all reportable transactions in purchases or sales of long-term securities amounts to or exceeds the exemption level during the reporting month. (b) The Column-By-Column instructions for Columns 3 and 4 of Form S will be changed to be consistent with the language found in the glossary for ''United States Government Agency securities'', ''Columns 3 and 4—Report purchases (column 3) and sales (column 4) by foreign residents of long-term debt securities (bonds, notes, debentures and asset-backed securities (mortgage-backed securities and all other asset-backed securities)) guaranteed by or are the obligations of United States Government corporations or Federally-Sponsored Agencies. (See glossary entry for United States Government Agency securities).'' (c) The glossaries for all Treasury International Capital (''TIC'') reports will be consolidated into a single document which will provide

more consistency across the TIC system. As a result, the TIC S reporting instructions will not include a glossary but will point to the separate consolidated Glossary document on the Treasury Web site; (d) The Form S reports may be submitted electronically using the Federal Reserve's ''Reporting Central'', which replaces the previous Federal Reserve System's Internet Electronic Submission (IESUB) system. [Note: some other clarifications may be made in the instructions and glossary.] (e) These changes will be effective beginning with the reports as of June 30, 2014.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Form:* S (1505–0001).

*Estimated Number of Respondents:* 188.

*Estimated Average Time per Respondent:* Six and three tenth hours per respondent per filing. This estimate includes the Current Actions proposed above. The estimated average time per respondent varies from 10.8 hours for the approximately 30 major reporters to 5.4 hours for the other reporters.

*Estimated Total Annual Burden Hours:* 14,130 hours, based on 12 reporting periods per year.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Form S is necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

**Dwight Wolkow,**

*Administrator, International Portfolio Investment Data Systems.*

[FR Doc. 2014–03027 Filed 2–11–14; 8:45 am]

**BILLING CODE 4810–25–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Designation of 8 Individuals and 2 Entities Pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism''

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 8 individuals and 2 entities whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

**DATES:** The designations by the Director of OFAC of the 8 individuals and 2 entities in this notice, pursuant to Executive Order 13224, are effective on February 6, 2014.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

**SUPPLEMENTARY INFORMATION:**

### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

### Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose 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; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On February 6, 2014, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, 8 individual(s) and 2 entit(ies) whose property and interests in property are blocked pursuant to Executive Order 13224.

The listings for these individuals and entities on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

**Individuals**

1. KOSARAYANIFARD, Pejman Mahmood (a.k.a. CASARYANIFARD, Pejman; a.k.a. KOSARAYAN FARD, Ali Pejman Mahmud; f.k.a. KOSARIAN FARD; a.k.a. KOSARIAN FARD, Pejman; a.k.a. KOSARIAN, Amir; a.k.a. KOSARYANI-FARD, Pejman), P.O. Box 52404, Dubai, United Arab Emirates; DOB 27 Feb 1973; Passport C20423657 (individual) [SDGT].

2. MALEKOUTI POUR, Hamidreza (a.k.a. MALAKOTIPOUR, Hamid Reza; a.k.a. MALAKOTIPOUR, Hamidreza; a.k.a. MALAKOUTIPOUR, Hamid Reza; a.k.a. MALAKUTIPUR, Hamid Reza; a.k.a. MALKOTIPOUR, Hamid Reza); DOB 18 Oct 1960; Passport B5660433 (Iran) (individual) [SDGT].

3. MAHMOUDI, Gholamreza (a.k.a. MAHMOUDI, Gholam Reza; a.k.a. MAHMOUDI, Ghulam Reza Khodrat; a.k.a. MAHMUDI, Qolam Reza); DOB 03 Feb 1958; nationality Iran; Passport 5659068 (individual) [SDGT].

4. MUSAVI, Sayyed Kamal (a.k.a. JAMALI, Sayyed Kamal); DOB 03 Jan 1958 (individual) [SDGT] [IFSR].

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Dated: February 6, 2014.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

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Part II

## Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 54, and 301

Shared Responsibility for Employers Regarding Health Coverage; Final Rule

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1, 54, and 301**

**[TD 9655]**

**RIN 1545–BL33**

## Shared Responsibility for Employers Regarding Health Coverage

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations providing guidance to employers that are subject to the shared responsibility provisions regarding employee health coverage under section 4980H of the Internal Revenue Code (Code), enacted by the Affordable Care Act. These regulations affect employers referred to as applicable large employers (generally meaning, for each year, employers that had 50 or more full-time employees, including full-time equivalent employees, during the prior year). Generally, under section 4980H an applicable large employer that, for a calendar month, fails to offer to its full-time employees health coverage that is affordable and provides minimum value may be subject to an assessable payment if a full-time employee enrolls for that month in a qualified health plan for which the employee receives a premium tax credit.

**DATES:** *Effective date:* These regulations are effective February 12, 2014.

*Applicability Dates:* For dates of applicability, see section XVI of this preamble, §§ 54.4980H–1(b), 54.4980H–2(f), 54.4980H–3(i), 54.4980H–4(h), 54.4980H–5(g), and 54.4980H–6(b).

**FOR FURTHER INFORMATION CONTACT:** Kathryn Johnson or Shad Fagerland, (202) 317–6846 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

Sections I through IV of the preamble (''Background'') describe section 4980H, including previously issued guidance under section 4980H, as well as related statutory provisions. Sections V through XIV of the preamble (''Explanation and Summary of Comments'') describe the comments received on the proposed regulations and explain amendments to the proposed regulations. Section XV of the preamble (''Transition Relief and Interim Guidance'') provides certain transition relief and interim guidance under section 4980H, and section XVI of the preamble provides information on the effective date for and reliance on these final regulations.

### I. Shared Responsibility for Employers (Section 4980H)

*A. In general*

Section 4980H was added to the Code by section 1513 of the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), was amended by section 10106(e) and (f) of the Patient Protection and Affordable Care Act, was further amended by section 1003 of the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)), and was further amended by the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10 (125 Stat. 38 (2011)) (collectively, the Affordable Care Act). Section 1513(d) of the Affordable Care Act provides that section 4980H applies to months beginning after December 31, 2013; however, Notice 2013–45 (2013–31 IRB 116), issued on July 9, 2013, provides transition relief for 2014 with respect to section 4980H.

Section 4980H applies only to applicable large employers. An applicable large employer with respect to a calendar year is defined in section 4980H(c)(2) as an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year. For purposes of determining whether an employer is an applicable large employer, full-time equivalent employees (FTEs), as well as full-time employees, are taken into account. As set forth in section 4980H(c)(2)(E), the number of an employer's FTEs is determined based on the hours of service of employees who are not full-time employees. Under section 4980H(c)(2)(C), the determination of whether an employer that was not in existence in the preceding calendar year is an applicable large employer is based on the average number of employees that it is reasonably expected the employer will employ on business days in the current calendar year.

Section 4980H generally provides that an applicable large employer is subject to an assessable payment if either (1) the employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan and any full-time employee is certified to the employer as having received an applicable premium tax credit or cost-sharing reduction (section 4980H(a) liability), or (2) the employer offers its full-time employees (and their dependents) the opportunity to enroll in MEC under an eligible employer-sponsored plan and one or more full-time employees is certified to the employer as having received an applicable premium tax credit or cost-sharing reduction (section 4980H(b) liability). Section 4980H(c)(4) provides that a full-time employee with respect to any month is an employee who is employed on average at least 30 hours of service per week.

An employer may be liable for an assessable payment under section 4980H(a) or (b) only if one or more full-time employees are certified to the employer as having received an applicable premium tax credit or cost-sharing reduction. The assessable payment under section 4980H(a) is equal to the number of all full-time employees (excluding 30 full-time employees) multiplied by one-twelfth of $2,000 for each calendar month, while the assessable payment under section 4980H(b) is based on the number of full-time employees who are certified to the employer as having received an applicable premium tax credit or cost-sharing reduction with respect to that employee's purchase of health insurance for the employee on an Affordable Insurance Exchange (Exchange) [1] multiplied by one-twelfth of $3,000 for each calendar month. In no case, however, may the liability under section 4980H(b) exceed the maximum potential liability under section 4980H(a). Generally, liability under section 4980H(b) may arise because, with respect to a full-time employee who has been certified to the employer as having received an applicable premium tax credit or cost-sharing reduction,[2] the coverage [3] offered by the employer is not affordable within the meaning of section 36B(c)(2)(C)(i) or does not provide minimum value (MV) within the meaning of section 36B(c)(2)(C)(ii). An employee's receipt of a premium tax credit under section 36B (premium tax credit) with respect to coverage for a dependent only will not result in liability for the employer under section 4980H.

*B. Previously issued guidance*

During 2011 and 2012, the Treasury Department and the IRS published four notices, each of which outlined potential approaches to future guidance

[1] An Exchange is also referred to in other published guidance as a Marketplace.

[2] For simplicity, references in this preamble to full-time employees certified as having received a premium tax credit include full-time employees receiving the premium tax credit or the cost-sharing reduction because, in connection with Exchange coverage, only individuals who qualify for the premium tax credit can qualify for a cost-sharing reduction.

[3] For purposes of this preamble, the term ''coverage'' means MEC.

under section 4980H and requested public comments: (1) Notice 2011–36 (2011–21 IRB 792) (addressed the definition of the terms *employer, employee,* and *hour of service* and requested comments on an approach to use an optional look-back measurement method for determining full-time employee status); (2) Notice 2011–73 (2011–40 IRB 474) (requested comments on a health coverage affordability safe harbor for employers under section 4980H using Form W–2 wages); (3) Notice 2012–17 (2012–9 IRB 430) (provided that the look-back measurement method and the Form W–2 affordability safe harbor will be incorporated into upcoming proposed regulations and requested comments on a potential approach for determining the full-time employee status of new employees under section 4980H); and (4) Notice 2012–58 (2012–41 IRB 436) (provided guidance and reliance on approaches for ongoing employees and new employees who are reasonably expected to be full-time employees and requested comments on a revised optional method for determining the full-time employee status for new employees with variable hours and new seasonal employees). Public comments were submitted in response to each of the four notices.

Taking into account all the comments received in response to this series of notices, on December 28, 2012, the Treasury Department and the IRS released a notice of proposed rulemaking (REG–138006–12, 78 FR 218). Written and electronic comments responding to the notice of proposed rulemaking were received. The comments are available for public inspection at *www.regulations.gov* or upon request. A public hearing was conducted on April 23, 2013. After consideration of all of the comments and testimony, the proposed regulations are adopted as amended by this Treasury decision. The amendments are discussed in this preamble.

After the issuance of the proposed regulations, on July 9, 2013, the Treasury Department and the IRS issued Notice 2013–45, which provides as transition relief that no assessable payments under section 4980H will apply for 2014. Notice 2013–45 also provides transition relief for 2014 for the section 6056 information reporting requirements for applicable large employers and the section 6055 information reporting requirements for providers of MEC.

The preamble to the proposed regulations provides transition relief that allows flexibility for individuals to make changes in salary reduction elections for accident and health plans provided through section 125 cafeteria plans for non-calendar cafeteria plan years beginning in 2013. The scope of this transition relief was clarified in section VI of Notice 2013–71 (2013–47 IRB 532), issued on October 31, 2013.

## II. Minimum Essential Coverage, Minimum Value and Affordability (Sections 5000A and 36B)

MEC, MV and affordability are defined under Code provisions other than section 4980H, but all relate to the determination of liability under section 4980H, and accordingly are summarized briefly in this section of the preamble (but are more fully described in other cited guidance). Specifically, for purposes of section 4980H, an employer is not treated as having offered coverage to an employee unless the coverage is MEC. Moreover, under section 36B, an individual who is offered employer coverage but instead purchases coverage under a qualified health plan within the meaning of section 1301(a) of the Affordable Care Act on an Exchange may be eligible for a premium tax credit if the household income of the individual's family falls within certain thresholds and the coverage offered by the employer either does not provide MV or is not affordable. While an individual may purchase coverage under a qualified health plan on an Exchange without regard to whether the individual is eligible for a premium tax credit, an employer's potential liability under section 4980H is affected by the individual's purchase of coverage on an Exchange only if the individual receives a premium tax credit.

### *A. Minimum Essential Coverage (MEC)*

MEC is defined in section 5000A(f) and the regulations under that section. Section 5000A(f)(1)(B) provides that MEC includes coverage under an eligible employer-sponsored plan. Under section 5000A(f)(2) and § 1.5000A–2(c)(1), an eligible employer-sponsored plan is, with respect to any employee, (1) group health insurance coverage offered by, or on behalf of, an employer to the employee that is either (a) a governmental plan within the meaning of section 2791(d)(8) of the Public Health Service Act (PHS Act) (42 U.S.C. 300gg–91(d)(8)), (b) any other plan or coverage offered in the small or large group market within a State, or (c) a grandfathered health plan, as defined in section 5000A(f)(1)(D), offered in a group market, or (2) a self-insured group health plan under which coverage is offered by, or on behalf of, an employer to the employee. Section 5000A(f)(3) and regulations thereunder provide that MEC does not include coverage consisting solely of excepted benefits described in section 2791(c)(1), (c)(2), (c)(3), or (c)(4) of the PHS Act or regulations issued under these provisions. See § 1.5000A–2(g).

### *B. Minimum Value (MV)*

If the coverage offered by an employer fails to provide MV, an employee may be eligible to receive coverage in a qualified health plan supported by the premium tax credit. Under section 36B(c)(2)(C)(ii), a plan fails to provide MV if the plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of those costs.

Section 1302(d)(2)(C) of the Affordable Care Act provides that, in determining the percentage of the total allowed costs of benefits provided under a group health plan, the regulations promulgated by the Secretary of Health and Human Services (HHS) under section 1302(d)(2) of the Affordable Care Act apply. HHS published final regulations under section 1302(d)(2) of the Affordable Care Act on February 25, 2013 (78 FR 12834). On May 3, 2013, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–125398–12, 78 FR 25909) that adopts the HHS rules and provides additional guidance on MV. The HHS regulations at 45 CFR 156.20 define the percentage of the total allowed costs of benefits provided under a group health plan as (1) the anticipated covered medical spending for essential health benefits (EHB) coverage (as defined in 45 CFR 156.110(a)) paid by a health plan for a standard population, (2) computed in accordance with the plan's cost sharing, and (3) divided by the total anticipated allowed charges for EHB coverage provided to the standard population. In addition, 45 CFR 156.145(c) provides that the standard population used to compute this percentage for MV (as developed by HHS for this purpose) reflects the population covered by typical self-insured group health plans. The HHS regulations describe several options for determining MV, including the MV Calculator (available at *http://cciio.cms.gov/resources/regulations/index.html*). Alternatively, a plan may determine MV through one of the safe harbors being established by HHS and the IRS. For plans with nonstandard features that are incompatible with the MV Calculator or a safe harbor, 45 CFR 156.145(a)(3) provides that the plan may determine MV through an actuarial certification from a member of the American Academy of Actuaries after the member performed an analysis in

accordance with generally accepted actuarial principles and methodologies. Under proposed § 1.36B–6(f)(4), an actuary performing an actuarial certification for a plan with nonstandard features must use the MV Calculator to determine the plan's MV for plan coverage the MV calculator measures. The actuary adds to that MV percentage the result of the actuary's analysis of nonstandard features. Finally, 45 CFR 156.145(a)(4) provides that a plan in the small group market satisfies MV if it meets the requirements for any of the levels of metal coverage defined at 45 CFR 156.140(b) (bronze, silver, gold, or platinum).

*C. Affordability*

Under section 36B(c)(2)(B) and (C), an employee is not eligible for subsidized coverage for any month in which the employee is offered health coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) that provides MV and that is affordable to the employee. Coverage for an employee under an eligible employer-sponsored plan is affordable if the employee's required contribution (within the meaning of section 5000A(e)(1)(B)) for self-only coverage does not exceed 9.5 percent of the taxpayer's household income for the taxable year. See section 36B(c)(2)(C)(i) and § 1.36B–1(e).

**III. Reporting Requirements for Applicable Large Employers (Section 6056)**

Section 6056, enacted by the Affordable Care Act, directs an applicable large employer to file a return with the IRS that reports, for each employee who was a full-time employee for one or more months during the calendar year, certain information described in section 6056(b) about the health care coverage the employer offered to that employee (or, if applicable, that the employer did not offer health care coverage to that employee). Section 6056 also requires applicable large employers to furnish, by January 31 of the calendar year following the calendar year for which the return must be filed, a related statement described in section 6056(c) to each full-time employee for whom information is required to be included on the return. On September 5, 2013, the Treasury Department and the IRS released a notice of proposed rulemaking (REG–136630–12, [78 FR 54996]) providing guidance under section 6056, including a description of and request for comments on certain simplified reporting methods under consideration by the Treasury Department and the IRS.

**IV. The 90-Day Limit on Waiting Periods (Public Health Service Act Section 2708)**

Section 2708 of the PHS Act [4] provides that, for plan years beginning on or after January 1, 2014, a group health plan or health insurance issuer offering group health insurance coverage may not apply any waiting period that exceeds 90 days. Section 2704(b)(4) of the PHS Act, section 701(b)(4) of ERISA, and section 9801(b)(4) define a waiting period to be the period that must pass with respect to an individual before the individual is eligible to be covered for benefits under the terms of the plan. Section 2708 of the PHS Act does not require the employer to offer coverage to any particular employee or class of employees, but prevents an otherwise eligible employee (or dependent) from waiting more than 90 days before coverage becomes effective.

Notice 2012–59 (2012–41 IRB 443), and parallel guidance issued by the Department of Labor (DOL) and HHS,[5] provide temporary guidance on compliance with section 2708 of the PHS Act and provide that this temporary guidance remains in effect at least through the end of 2014.

On March 21, 2013, the Treasury Department, DOL, and HHS (the Departments) issued a notice of proposed rulemaking (REG–122706–12, 78 FR 17313) providing guidance under section 2708 of the PHS Act. In the preamble to the proposed regulations under section 2708 of the PHS Act, the Departments state that, in their view, the proposed regulations are consistent with, and no more restrictive on employers than Notice 2012–59 (and the parallel guidance issued by DOL and HHS) and further state that the Departments will consider compliance with the proposed regulations as compliance with section 2708 of the PHS Act at least through the end of 2014.

Under the section 4980H final regulations, there are times when an employer will not be subject to an assessable payment with respect to an employee although the employer does not offer coverage to that employee during that time. However, the fact that an employer will not owe an assessable payment under section 4980H for failure to offer coverage during certain periods of time does not, by itself, constitute compliance with section 2708 of the PHS Act during that same period.[6]

**Explanation and Summary of Comments**

**V. Determination of Status as an Applicable Large Employer**

*A. In General*

Section 4980H applies only to employers that are applicable large employers. Section 4980H(c)(2)(A) provides that the term *applicable large employer* means, with respect to a calendar year, an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year. Section 4980H(c)(2)(E) provides that solely for purposes of determining whether an employer is an applicable large employer, an employer shall, in addition to the number of full-time employees for any month otherwise determined, include for such month a number of employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120. For purposes of the proposed regulations and these final regulations, these additions to the number of full-time employees made solely for the determination of status as an applicable large employer are referred to as full-time equivalent employees (FTEs).

An applicable large employer may consist of multiple related entities (such as corporations) due to the application of the aggregation rules. Each such entity is referred to in this preamble and the final regulations as an *applicable large employer member.*

Commenters requested that the threshold for status as an applicable large employer be increased to various numbers of full-time employees (including FTEs) greater than 50. The final regulations do not adopt this suggestion as a permanent rule because it is inconsistent with the statutory definition of applicable large employer

[4] The Affordable Care Act adds section 9815(a)(1) to the Code and section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) to incorporate the provisions of part A of title XXVII of the PHS Act into the Code and ERISA, and to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by these references are sections 2701 through 2728.

[5] See Department of Labor Technical Release 2012–02 and HHS FAQs issued August 31, 2012.

[6] The Departments expect to issue final regulations in the near future with respect to section 2708 of the PHS Act. As stated in the proposed rules, the Departments will consider compliance with the proposed regulations under section 2708 of the PHS Act as compliance with section 2708 of the PHS Act through at least 2014 and, to the extent final regulations are more restrictive on plans and issuers, the final regulations will not be effective prior to January 1, 2015. 78 FR 17317 (March 21, 2013).

in section 4980H(c)(2). But see section XV.D.6 of this preamble for 2015 transition relief for certain applicable large employers with fewer than 100 full-time employees (including FTEs). Additional comments received on the definition of applicable large employer and modifications to the rules related to the determination of status as an applicable large employer contained in the proposed regulations are described in this section V of the preamble.

*B. Rules for Employers Not in Existence in Preceding Year*

Section 4980H(c)(2)(C)(ii) provides that in the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether such employer is an applicable large employer for the current calendar year is based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

The final regulations clarify that an employer is treated as not having been in existence throughout the prior calendar year only if the employer was not in existence on any business day in the prior calendar year. For example, if an employer comes into existence on May 1 of Year 1, during Year 1 the employer's status as an applicable large employer is determined based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year (Year 1). To determine the employer's status as an applicable large employer for Year 2, the employer's status as an applicable large employer is determined based on the number of employees that it employed on business days from May 1 through December 31 of Year 1 (rather than relying on the employer's reasonable expectations).

Commenters requested that an employer not in existence in the prior calendar year be granted a safe harbor under which an employer would not be an applicable large employer until a certain period of time has passed after the employer begins operations or until a certain period of time has passed after a new employer employs at least a specified number of full-time employees. One commenter opposed the adoption of a safe harbor that would delay the applicable large employer determination for new employers. The final regulations do not adopt such a safe harbor.

However, other aspects of section 4980H and the final regulations may address the concern raised by commenters that new employers will have difficulty establishing a group health plan in the first months of operation. In particular, under the final regulations, the determination of whether a new employer is an applicable large employer during its first calendar year is based on the employer's reasonable expectations at the time the business comes into existence, even if subsequent events cause the actual number of full-time employees (including FTEs) to exceed that reasonable expectation. Section 54.4980H–2(b)(3). Also, for purposes of the liability calculation under section 4980H(a), with respect to a calendar month, the number of full-time employees of an applicable large employer member is reduced by that member's allocable share of 30. Section 54.4980H–4(e). This reduction could be particularly significant for a new employer with a number of full-time employees that does not exceed 30 by a large number for certain calendar months (and that for some calendar months may be below 30), circumstances which the Treasury Department and the IRS anticipate would characterize many new employers. Also, under the look-back measurement method if an employee is reasonably expected at his or her start date to be a full-time employee (and is not a seasonal employee) and is otherwise eligible for an offer of coverage, an employer that sponsors a group health plan that offers coverage to the employee by the first day of the calendar month immediately following the conclusion of the employee's initial three full calendar months of employment will not be subject to an assessable payment under section 4980H(a) (and section 4980H(b) if the coverage offered provides MV) for those three calendar months by reason of its failure to offer coverage to the employee for the initial three full calendar months of employment. Section 54.4980H–3(d)(2)(iii). See also § 54.4980H–3(c)(2) for a similar rule under the monthly measurement method that applies based on when an employee first becomes otherwise eligible for an offer of coverage. An employer is also not subject to an assessable payment under section 4980H with respect to an employee for the first calendar month of the employee's employment if the employee's start date is other than the first day of the calendar month. See § 54.4980H–4(c) and § 54.4980H–5(c).

*C. Seasonal Workers*

Section 4980H(c)(2)(B) provides that an employer is not considered to employ more than 50 full-time employees if (1) the employer's workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and (2) the employees in excess of 50 employed during such 120-day period are seasonal workers. For this purpose, the proposed regulations define the term *seasonal worker* as a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including (but not limited to) workers covered by 29 CFR 500.20(s)(1) and retail workers employed exclusively during holiday seasons. The proposed regulations further provide that employers may apply a reasonable, good faith interpretation of the term *seasonal worker* and a reasonable good faith interpretation of 29 CFR 500.20(s)(1) (including as applied by analogy to workers and employment positions not otherwise covered under 29 CFR 500.20(s)(1)).

Commenters requested that other employees with seasonal employment who are not excluded under the seasonal worker exception nonetheless be excluded for purposes of determining applicable large employer status. However, given the specific statutory reference to seasonal workers as part of a more limited exception, there is no statutory authority for such a broad exclusion. Accordingly, the final regulations adopt the provisions of the proposed regulations with certain clarifications in response to comments.

With respect to the reference to retail workers employed exclusively during the holiday seasons, commenters requested clarification of the specific events or periods of time that would be treated as holiday seasons. The final regulations do not indicate specific holidays or the length of any holiday season for this purpose, as these will differ for different employers. Retail workers employed exclusively during holiday seasons often are seasonal workers and therefore are generally excludible on that basis, if the employer otherwise meets the conditions of the seasonal worker exception.

The proposed regulations apply the seasonal worker exception set forth in section 4980H(c)(2) based on the prior calendar year. One commenter requested that the seasonal worker exception apply to new employers. The final regulations adopt this suggestion, so that in the case of an employer that was not in existence on any business day during the preceding calendar year, the seasonal worker exception applies so that the employer will not be treated as an applicable large employer if it reasonably expects (1) its workforce to exceed 50 full-time employees (including FTEs) for 120 days or fewer during the current calendar year, and (2)

the employees in excess of 50 employed during such 120-day period to be seasonal workers.

*D. Application of Employer Aggregation Rules to Determination of Status as an Applicable Large Employer*

Section 4980H(c)(2)(C)(i) provides that, for purposes of determining whether an employer is an applicable large employer, all persons treated as a single employer under section 414(b), (c), (m) or (o) are treated as one employer. Comments were received both in favor of and opposed to this aggregation rule; however, the rule is explicitly set forth in the statute and is thus retained. While the final regulations therefore incorporate this rule, they also provide, consistent with the proposed regulations, that the determination of any potential assessable payment under section 4980H(a) or (b) is made separately for each entity (referred to as an applicable large employer member) that together with other entities is treated as the applicable large employer. For a discussion of the determination of any potential liability under section 4980H, see section X of this preamble.

The final regulations continue to reserve on the application of the employer aggregation rules under section 414(b), (c), (m) and (o) to government entities, as well as to churches or conventions or associations of churches (as defined in § 1.170A–9(b)). Until further guidance is issued, those entities may apply a reasonable, good faith interpretation of section 414(b), (c), (m) and (o) in determining their status as an applicable large employer.

*E. Predecessor Employers*

Section 4980H(c)(2)(C)(iii) provides that, for purposes of determining whether an employer is an applicable large employer, any reference to an employer includes a reference to any predecessor of the employer. As with the proposed regulations, the final regulations reserve with respect to specific rules for identifying a predecessor employer (or the corresponding successor employer). The Treasury Department and the IRS continue to consider development of rules for identifying a predecessor employer (or the corresponding successor employer), and until further guidance is issued, taxpayers may rely upon a reasonable, good faith interpretation of the statutory provision on predecessor (and successor) employers for purposes of the applicable large employer determination. For this purpose, use of the rules developed in the employment tax context for determining when wages paid by a predecessor employer may be considered as having been paid by the successor employer (see § 31.3121(a)(1)–1(b)) is deemed reasonable.

*F. Administrative Period*

As set forth in section XV.D.3 of this preamble, the Treasury Department and the IRS have concluded that transition relief for the 2015 applicable large employer determination is appropriate because employers will be becoming familiar with the applicable large employer determination method and applying it for the first time with respect to 2014 (to determine their status for 2015).

In addition, commenters suggested that section 4980H should not apply to employers for a period of time after the end of the calendar year so that employers that are close to the 50 full-time employee (plus FTE) threshold, whose status may be affected by data from the final calendar months of the calendar year, have time to respond to becoming an applicable large employer. To address this concern, the final regulations provide, with respect to an employee who was not offered coverage at any point in the prior calendar year, that if the applicable large employer offers coverage on or before April 1 of the first year in which the employer is an applicable large employer, the employer will not be subject to an assessable payment (for January through March of the first year the employer is an applicable large employer) under section 4980H(a) by reason of its failure to offer coverage to the employee for January through March of that year, and the employer will not be subject to an assessable payment (for January through March of the first year the employer is an applicable large employer) under section 4980H(b) if the coverage offered provides MV. However, if the employer does not offer coverage to the employee by April 1, the employer may be subject to a section 4980H(a) assessable payment for those initial calendar months in addition to any subsequent calendar months for which coverage is not offered, and if the employer offers coverage by April 1 but the coverage does not provide MV, the employer may be subject to a section 4980H(b) assessable payment for those initial calendar months (in addition to any subsequent calendar months for which coverage does not provide MV or is not affordable). This rule applies only during the first year for which an employer is an applicable large employer (even if the employer falls below the 50 full-time employee plus FTE threshold for a subsequent year and then expands and becomes an applicable large employer again).

*G. Full-Time Equivalent Employees*

Full-time equivalent employees are included in the applicable large employer determination. See § 54.4980H–2(c). A commenter suggested that the final regulations provide rounding rules for the monthly FTE calculation. The number of FTEs for each calendar month in the preceding calendar year is determined by calculating the aggregate number of hours of service for that calendar month for employees who were not full-time employees (but not more than 120 hours of service for any employee) and dividing that number by 120. The proposed regulations and these final regulations provide that in determining the number of FTEs for each calendar month, fractions are taken into account. In response to a request for a rounding rule, the final regulations provide, as an option, that an employer may round the resulting monthly FTE calculation to the nearest one hundredth. For example, an employer with a calculation of 30.544 FTEs for a calendar month may round that number to 30.54 FTEs.

*H. Application of Employment Break Period Rules and Special Unpaid Leave Rules to Determination of Applicable Large Employer Status*

The proposed regulations and these final regulations provide a method for determining full-time employee status, referred to as the look-back measurement method, under which employers may determine the status of an employee as a full-time employee during a subsequent period (referred to as the stability period), based upon the hours of service of the employee in a prior period (referred to as the measurement period). See § 54.4980H–3(d). The proposed regulations and these final regulations also provide a method under which special unpaid leave and employment break periods during a measurement period are not treated as a period during which zero hours of service are credited when applying the look-back measurement method. See § 54.4980H–3(d)(6). Commenters suggested that these rules be extended to the applicable large employer determination calculation so that periods during which an employee experiences special unpaid leave or an employment break period would not be counted as periods of zero hours of service, as counting those periods in that manner brings down the average hours of service for the employee (which will reduce the full-time

employee and FTE counts). Because the statute explicitly provides the method for determining applicable large employer status, including counting employees who do not average 30 hours of service per week, the final regulations do not adopt this suggestion.

**VI. Hours of Service**

The identification of an employer's full-time employees and FTEs for purposes of determining its status as an applicable large employer, and of an employer's full-time employees for purposes of determining any potential liability under section 4980H, is based on each employee's hours of service. The following section discusses the rules for determining an employee's hours of service.

The final regulations adopt the general definition of hours of service set forth in the proposed regulations. However, as discussed in sections VI.B and VI.C of this preamble, the final regulations include further rules to clarify or modify the application of the rules for crediting hours of service to address various situations raised in the comments.

*A. General Definition of Hours of Service*

Section 4980H(c)(4)(B) provides that the Secretary of the Treasury, in consultation with the Secretary of Labor, will prescribe such regulations, rules and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of section 4980H to employees who are not compensated on an hourly basis. In consultation with the Secretary of Labor, the Treasury Department and the IRS formulated rules set forth in the proposed regulations that generally were based on the definition of the term *hour of service* for purposes of the rules related to the crediting of hours of service under a qualified retirement plan (see 29 CFR 2530.200b-2(a)), with certain modifications.

Specifically, the proposed regulations define an *hour of service* to mean each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer, and each hour for which an employee is paid, or entitled to payment by the employer for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence (as defined in 29 CFR 2530.200b–2(a)).

For employees paid on an hourly basis, an employer is required to calculate actual hours of service from records of hours worked and hours for which payment is made or due. For employees paid on a non-hourly basis (such as salaried employees), an employer may calculate the actual hours of service using the same method as for hourly employees, or use a days-worked equivalency crediting the employee with eight hours of service for each day for which the employee would be required to be credited with at least one hour of service, or a weeks-worked equivalency whereby an employee would be credited with 40 hours of service for each week for which the employee would be required to be credited with at least one hour of service. The proposed regulations prohibit use of these equivalencies, however, in circumstances in which their use would result in a substantial understatement of an employee's hours of service in a manner that would cause that employee not to be treated as a full-time employee.

Comments were received on the days-worked and weeks-worked equivalency methods. Commenters requested that the number of hours of service credited under the equivalency methods be increased from eight hours per day or 40 hours per week to 10 hours per day or 45 hours per week, consistent with equivalency methods contained in regulations issued by DOL. See 29 CFR 2530.200b–3(e). The higher equivalency amounts under the DOL regulations are intended to provide an expansive standard for the number of hours an employee is credited with for purposes of eligibility, vesting and accrual of benefits in a pension plan. In the context of section 4980H, an equivalency of eight hours per day or 40 hours per week is more appropriate.

Commenters requested clarification of the circumstances under which an employee must be credited with service under the equivalency methods. Specifically, commenters asked whether an employee must have actually worked one hour of service in a day or week to be credited with eight or 40 hours of service respectively for that period. The equivalency methods contained in the proposed regulations provide that hours must be credited for any day or week in which the employee would otherwise be required to be credited with one hour of service if treated as an hourly employee. As described previously in this section VI.A, under the service crediting method applicable to hourly employees, an hourly employee must be credited with hours of service for certain hours in which no services are performed but with respect to which payment is made or owed by the employer (such as certain hours of paid leave). Accordingly, the equivalency methods do not require that an employee have actually worked an hour of service in a day or week to be credited with eight or 40 hours of service with respect to that day or week. This approach is the same as the equivalency rule for crediting hours of service under an employee pension benefit plan under DOL regulations at 29 CFR 2530.200b–3(e).

The preamble to the proposed regulations states that an employer may change the method of calculating non-hourly employees' hours of service for each calendar year. At one commenter's request, this rule has been added to the text of the final regulations. As set forth in the proposed and final regulations, an employer is not required to use the same method of calculating a non-hourly employee's hours of service for all non-hourly employees, and may apply different methods of calculating a non-hourly employee's hours of service for different categories of non-hourly employees, provided that the categories are reasonable and consistently applied. An employer may change the method of calculating a non-hourly employee's hours of service for one or more categories of non-hourly employees for each calendar year as well.

One commenter asked whether an employer is required to calculate hours of service using all three hours of service calculation methods provided for non-hourly employees (actual hours and two equivalencies), and if an employer is required to classify the employee as a full-time employee if the employee would have such status under any of the methods. The regulations indicate that the equivalency methods are optional, and that an employer choosing to use equivalencies may determine hours of service using one of the equivalency methods. Accordingly, employers are not required to use more than one method of determining hours of service for any particular employee.

Commenters requested that the equivalency methods be expanded to include employees who are compensated on an hourly basis. Because employers are required to maintain records of hours worked in the case of employees who are compensated on an hourly basis, and because use of the equivalency methods could in some cases understate or overstate the number of hours actually worked by such employees, the final regulations do not adopt this suggestion.

One commenter requested that the anti-abuse rule prohibiting the use of an equivalency method if the result is to substantially understate an employee's hours of service in a manner that would cause the employee not to be treated as

a full-time employee be expanded to also prohibit the use of an equivalency method if the result is to understate hours of service for a substantial number of employees (even if no given employee's hours of service are understated substantially and even if the understatement would not cause the employee to not be treated as a full-time employee). This expanded rule could affect the calculation of FTEs as part of the applicable large employer determination. For example, if an employer had 100 non-hourly employees who each worked two days per week for 10 hours each day, the employer could not use the days-worked equivalency because that would result in 400 fewer hours of service being included in the FTE calculation for each week, even though the understatement would not affect the employees' treatment as full-time employees (because these employees are not full-time employees, regardless of the use of equivalencies). The final regulations adopt this suggestion.

*B. Exclusions From Definition of Hour of Service*

Commenters requested that hours of service performed in certain capacities not be counted as an hour of service. The final regulations adopt the following changes in response to these comments.[7]

1. Volunteer Employees

Commenters requested that hours of service performed in the capacity of a volunteer for a government entity or tax-exempt organization not be counted as hours of service for purposes of section 4980H. Under the definition of hour of service outlined in these regulations, an hour of service is generally defined as an hour for which an employee is paid or entitled to payment. Accordingly, hours worked by a volunteer who does not receive (and is not entitled to receive) compensation in exchange for the performance of services are not treated as hours of service for purposes of section 4980H.

Commenters noted, however, that some volunteers receive compensation in the form of expense reimbursements, stipends, contributions to employee benefit plans, or nominal wages. Local governments, for instance, noted that many volunteer firefighters or other emergency responders are paid a salary or an hourly wage, generally at a rate lower than the rate paid to non-volunteers performing services in a similar capacity. Other volunteer firefighters or emergency responders may receive expense reimbursements or other fees each time they respond to a call. Commenters generally expressed concern that volunteer service would be discouraged if volunteer hours were required to be counted when determining whether the individual is a full-time employee for purposes of section 4980H.

In response to these concerns, the final regulations provide that hours of service do not include hours worked as a ''bona fide volunteer.'' For this purpose, the definition of ''bona fide volunteer'' is generally based on the definition of that term for purposes of section 457(e)(11)(B)(i), which provides special rules for length of service awards offered to certain volunteer firefighters and emergency medical providers under a municipal deferred compensation plan. For purposes of section 4980H, however, bona fide volunteers are not limited to volunteer firefighters and emergency medical providers. Rather, bona fide volunteers include any volunteer who is an employee of a government entity or an organization described in section 501(c) that is exempt from taxation under section 501(a) whose only compensation from that entity or organization is in the form of (i) reimbursement for (or reasonable allowance for) reasonable expenses incurred in the performance of services by volunteers, or (ii) reasonable benefits (including length of service awards), and nominal fees, customarily paid by similar entities in connection with the performance of services by volunteers.

2. Student Employees

Commenters from educational organizations requested that special rules apply for determining the hours of service of employees who are also students of an educational organization. These comments generally fell into two categories. First, commenters expressed concern about the impact of section 4980H on federal work study programs under which a student receives financial aid in the form of a federally subsidized work assignment. Commenters posited that if educational organizations were required to aggregate hours of service performed by the student employee in the context of the work study program with hours of service performed by the student employee for the educational organization in other capacities (for example, a non-work study position with the campus bookstore) in determining whether the student is a full-time employee for purposes of section 4980H, it could discourage educational organizations from hiring students in other capacities in addition to their work study positions. Second, commenters requested that hours of service performed for an outside employer by students through an internship or externship program sponsored by an educational organization not be counted as hours of service for the outside employer for section 4980H purposes. The commenters suggested that, without such an exception, outside employers would be discouraged from offering internships or externships to students, which could have a detrimental impact on the educational system.

The federal work study program, as a federally subsidized financial aid program, is distinct from traditional employment in that its primary purpose is to advance education. See 34 CFR part 675. To avoid having the application of section 4980H interfere with the attainment of that goal, the final regulations provide that hours of service for section 4980H purposes do not include hours of service performed by students in positions subsidized through the federal work study program or a substantially similar program of a State or political subdivision thereof. However, the final regulations do not include a general exception for student employees. All hours of service for which a student employee of an educational organization (or of an outside employer) is paid or entitled to payment in a capacity other than through the federal work study program (or a State or local government's equivalent) are required to be counted as hours of service for section 4980H purposes.

With respect to internships and externships, services by an intern or extern would not count as hours of service for section 4980H purposes under the general definition of hours of service contained in the regulations to the extent that the student does not receive, and is not entitled to, payment in connection with those hours. However, excluding hours of service for which interns or externs receive, or are entitled to receive, compensation from the employer from the definition of hours of service for section 4980H purposes would be subject to potential misuse through labeling positions as internships or externships to avoid application of section 4980H. The final regulations do not adopt a special rule for student employees working as

[7] Commenters also raised issues related to the application of the hour of service definition to certain categories of employees whose hours of service are particularly challenging to identify or track or for whom the final regulations' general rules for determining hours of service may present special difficulties. See section VI.C of this preamble.

interns or externs for an outside employer, and, therefore, the general rules apply, including the option to use the look-back measurement method, as appropriate, or the monthly measurement method.

3. Members of Religious Orders

A commenter requested clarification about whether members of religious orders must be treated as full-time employees of their orders for purposes of section 4980H. As noted in section VI.C of this preamble, the Treasury Department and the IRS continue to consider additional rules for the determination of hours of service for purposes of section 4980H with respect to certain categories of employees whose hours of service are particularly challenging to identify or track or for whom the final regulations' general rules for determining hours of service may present special difficulties, including hours worked by members of religious orders for the orders to which they belong. Until further guidance is issued, a religious order is permitted, for purposes of determining whether an employee is a full-time employee under section 4980H, to not count as an hour of service any work performed by an individual who is subject to a vow of poverty as a member of that order when the work is in the performance of tasks usually required (and to the extent usually required) of an active member of the order.

*C. Application of Hours of Service to Certain Employees*

Commenters requested guidance on the application of the hours of service definition to certain categories of employees whose hours of service are particularly challenging to identify or track or for whom the final regulations' general rules for determining hours of service may present special difficulties.

The Treasury Department and the IRS continue to consider additional rules for the determination of hours of service for purposes of section 4980H with respect to certain categories of employees (including adjunct faculty, commissioned salespeople, and airline employees), and certain categories of hours associated with work by employees (including layover hours (for example, for airline employees) and on-call hours). The regulation authorizes the promulgation of such rules through additional guidance, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)).

Until further guidance is issued, employers of adjunct faculty, employers of employees with layover hours, including the airline industry, and employers of employees with on-call hours, as described in sections VI.C.1 through VI.C.3 of this preamble, respectively, are required to use a reasonable method of crediting hours of service that is consistent with section 4980H. Further, employers of other employees whose hours of service are particularly challenging to identify or track or for whom the final regulations' general rules for determining hours of service may present special difficulties, such as commissioned salespeople, are required to use a reasonable method of crediting hours of service that is consistent with section 4980H.

A method of crediting hours is not reasonable if it takes into account only a portion of an employee's hours of service with the effect of characterizing, as a non-full-time employee, an employee in a position that traditionally involves at least 30 hours of service per week. For example, it is not a reasonable method of crediting hours to fail to take into account travel time for a travelling salesperson compensated on a commission basis. Paragraphs C.1 through C.3 of this section VI of the preamble describe methods of crediting hours of service that are (or are not) reasonable to use with respect to adjunct faculty, layover hours, including for airline industry employees, and on-call hours. The examples of reasonable methods provided are not intended to constitute the only reasonable methods of crediting hours of service. Whether another method of crediting hours of service in these situations is reasonable is based on the relevant facts and circumstances.

1. Adjunct Faculty

Commenters raised issues relating to adjunct faculty who receive compensation for teaching a certain number of classes (or credits) and whose compensation is not based on the actual time spent on non-classroom activities such as class preparation, grading papers and exams, and counseling students. Comments from employers generally suggested that the hours of service equivalencies for non-hourly employees (eight hours per day or 40 hours per week) were too high for this purpose, but that counting actual hours would be administratively burdensome. These commenters suggested various methods for permitting assumptions for hours of service that would be applied for each task completed, for example, a set number of hours of service per week per class or credit taught by an adjunct faculty member. Comments from employees and their representatives included two very different types of suggestions. Some suggested that any assumption be set sufficiently high and be subject to robust periodic review so as not to fail to attribute adequate hours of service for the work performed. Others suggested that the assumption be set at a relatively moderate level that would avoid giving undue incentives for institutions to reduce adjunct faculty members' teaching assignments to avoid full-time employee status.

In addition, comments from adjunct faculty members and educational organizations requested the adoption of a method whereby an adjunct faculty member would be treated as a full-time employee for purposes of section 4980H only if the faculty member were assigned a course load that was equivalent to (or, as requested in some comments, at least 75 percent of) the average course load assigned to faculty members who are treated as full-time employees by the particular educational organization or academic department. The course loads assigned to other faculty members may be a relevant factor in an employer's determination of the number of hours of service to be credited to an adjunct faculty member. However, the course loads of faculty treated as full-time employees may vary considerably, making implementation of the proposed approach very difficult to administer.

Until further guidance is issued, employers of adjunct faculty (and of employees in other positions that raise analogous issues with respect to the crediting of hours of service) are required to use a reasonable method for crediting hours of service with respect to those employees that is consistent with section 4980H. With respect to adjunct faculty members of an educational organization who are compensated on the basis of the number of courses or credit hours assigned, the commenters noted that a wide variation of work patterns, duties, and circumstances apply in different institutions, academic disciplines, and departments, and apply to different courses and individuals, and that this might factor into the reasonableness of a particular method of crediting hours of service in particular circumstances.

Various commenters also suggested, however, that, in the interest of predictability and ease of administration in crediting hours of service for purposes of section 4980H, regulations specify a multiple that might be applied to credit additional hours of service for each credit hour or hour of classroom time assigned to the adjunct faculty member. Commenters suggested a number of possible multiples that might be used for this purpose. After

reviewing these comments, the Treasury Department and the IRS have determined that, until further guidance is issued, one (but not the only) method that is reasonable for this purpose would credit an adjunct faculty member of an institution of higher education with (a) 2¼ hours of service (representing a combination of teaching or classroom time and time performing related tasks such as class preparation and grading of examinations or papers) per week for each hour of teaching or classroom time (in other words, in addition to crediting an hour of service for each hour teaching in the classroom, this method would credit an additional 1¼ hours for activities such as class preparation and grading) and, separately, (b) an hour of service per week for each additional hour outside of the classroom the faculty member spends performing duties he or she is required to perform (such as required office hours or required attendance at faculty meetings).

Although further guidance may be issued regarding these matters, the method described in the preceding paragraph may be relied upon at least through the end of 2015. To the extent any future guidance modifies an employer's ability to rely on that method, the period of reliance will not end earlier than January 1 of the calendar year beginning at least six months after the date of issuance of the guidance (but in no event earlier than January 1, 2016). This extended period of reliance is provided so that if the method described in the preceding paragraph is modified or replaced, employers will have sufficient time to make necessary adjustments. Of course, employers may credit more hours of service than would result under the method described in the preceding paragraph and also may offer coverage to additional employees beyond those identified as full-time employees under that method.

2. Layover Hours for Airline Industry Employees and Others

Commenters noted that pilots and flight attendants often are required, as a practical matter, to remain overnight between flights at a location other than their residence. The Treasury Department and the IRS continue to consider additional rules for the determination of hours of service, including layover hours, for purposes of section 4980H with respect to certain categories of employees whose hours of service are particularly challenging to identify or track or for whom the final regulations' general rules for determining hours of service may present special difficulties. Until further guidance is issued, with respect to categories of employees whose hours of service are particularly challenging to identify or track or for whom the final regulations' general rules for determining hours of service may present special difficulties, employers are required to use a reasonable method for crediting hours of service that is consistent with section 4980H.

With respect to layover hours, it is not reasonable for an employer to not credit a layover hour as an hour of service if the employee receives compensation for the layover hour beyond any compensation that the employee would have received without regard to the layover hour or if the layover hour is counted by the employer towards the required hours of service for the employee to earn his or her regular compensation. For example, if an employer requires that an employee perform services for 40 hours per week to earn full salary, and credits ''layover hours'' towards the 40 hours, then it would not be reasonable for the employer to fail to credit the layover hours as hours of service.

For layover hours for which an employee does not receive additional compensation and that are not counted by the employer towards required hours of service, it would be reasonable for an employer to credit an employee in the airline industry with 8 hours of service for each day on which an employee is required, as a practical matter, to stay away from home overnight for business purposes (that is, 8 hours each day (or 16 hours total) for the two days encompassing the overnight stay). The employee must be credited with the employee's actual hours of service for a day if crediting 8 hours of service substantially understates the employee's actual hours of service for the day (including layover hours for which an employee receives compensation or that are counted by the employer towards required hours of service). Other methods of counting hours of service may also be reasonable, depending on the relevant facts and circumstances.

3. On-Call Hours

Commenters requested that ''on-call'' hours, for which an employee has been directed by the employer to remain available to work, not be treated as hours of service unless the employee is directed to perform services. The commenters noted that a variety of compensation structures may apply to on-call hours. In some cases, employees are paid a reduced hourly wage for on-call hours. In other cases, employees are not paid additional compensation for on-call hours but are required to remain on call periodically as a condition of employment.

The Treasury Department and the IRS continue to consider additional rules for determining hours of service for purposes of section 4980H with respect to certain work arrangements, including on-call hours, or categories of employees whose hours of service are particularly challenging to identify or track or for whom the final regulations' general rules for determining hours of service may present special difficulties. Until further guidance is issued, employers of employees who have on-call hours are required to use a reasonable method for crediting hours of service that is consistent with section 4980H. It is not reasonable for an employer to fail to credit an employee with an hour of service for any on-call hour for which payment is made or due by the employer, for which the employee is required to remain on-call on the employer's premises, or for which the employee's activities while remaining on-call are subject to substantial restrictions that prevent the employee from using the time effectively for the employee's own purposes.

## VII. Identification of Full-Time Employees

### *A. In General*

Section 4980H(c)(4) defines the term *full-time employee* to mean, with respect to any month, an employee who is employed on average at least 30 hours of service per week. The final regulations provide two methods for determining full-time employee status—the monthly measurement method (described in section VII.B of this preamble) and the look-back measurement method (described in section VII.C of this preamble).

The final regulations reiterate that the requirements for use of the look-back measurement method and the monthly measurement method prescribe minimum standards for the identification of full-time employees. Employers may always treat additional employees as eligible for coverage, or otherwise offer coverage more expansively than would be required to avoid an assessable payment under section 4980H, subject to compliance with any nondiscrimination or other applicable requirements.

1. Thirty-Hour Threshold

Commenters requested that the 30 hours of service per week threshold be increased as part of the final regulations, either generally or as applied with

respect to certain positions or industries. Because the statute is explicit that the threshold for status as a full-time employee is an average of 30 hours of service per week, the final regulations do not adopt these suggestions.

Other commenters pointed to employees whose hours of service are restricted by federal or other law, arguing that in such cases a lower threshold should be applied to determine whether the employee is a full-time employee. In particular, airline pilots explained that federal aviation law restricts the number of hours that a pilot may fly, resulting in many pilots averaging fewer than 30 hours of service per week despite having what may be considered a full-time position within the standards of the industry. However, section 4980H contains no exceptions from the requirement that an employee average at least 30 hours of service per week to be a full-time employee. Accordingly, the 30 hours of service threshold is not adjusted for any particular industry or position of employment in the final regulations. However, see the discussion of the application of hours of service to certain employees at section VI.C of this preamble.

2. Monthly Equivalency

The proposed regulations provide that, for purposes of determining full-time employee status, 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week, provided that the employer applies this equivalency rule on a reasonable and consistent basis. This monthly standard takes into account that the average month consists of more than four weeks. Commenters suggested that the 130 hours of service monthly standard is not an appropriate proxy for 30 hours of service per week during certain shorter calendar months. However, the 130 hours of service monthly standard may also be lower than an average of 30 hours of service per week during other longer months of the calendar year (for example, the seven calendar months that consist of 31 days). Under the look-back measurement method in particular, any effect of this approximation will balance out over the calendar year (for example, over a 12-month measurement period, over two successive six-month measurement periods, or over four successive three-month measurement periods).

In developing the final regulations, the Treasury Department and the IRS considered whether the 130 hours of service monthly equivalency standard should apply to the monthly measurement method, described in section VII.B of this preamble, under which the determination of full-time employee status is based on each calendar month. A standard was considered that would prorate any additional days beyond the minimum 28 days in a calendar month, so that, for example, the months of January, March, May, July, August, October, and December would be treated as requiring 133 hours of service for full-time employee status (equal to 4 3/7 weeks multiplied by 30 hours of service per week). However, that standard would result in no less than three different monthly equivalencies (one for February, one for the four calendar months with 30 days, and one for the seven calendar months with 31 days). In addition, a calendar month may start on any day of the week, and there is no standard workweek for all employees so that some employees may, for example, perform services on weekends or for longer or varying shifts rather than set hours Monday through Friday. For these reasons, different standards for each calendar month would not only be an additional burden for employers, but also do little to address the variation in treatment that may occur, for example, between an employee generally performing hours of service on the weekend and an employee performing services on business days, solely due to the day of the week upon which a calendar month begins. Accordingly, the final regulations adopt a standard of 130 hours of service per calendar month for determining whether an employee is a full-time employee under both the look-back measurement method and the monthly measurement method. The 130 hours of service standard is equal to 30 hours of service per week multiplied by 52 weeks and divided by 12 calendar months.

3. Aggregation of Hours of Service Across Applicable Large Employer Members

The proposed regulations provide that, for purposes of identifying a full-time employee, hours of service must be counted across all applicable large employer members. For example, an employee who for a calendar month averaged 25 hours of service per week at one applicable large employer member and 15 hours of service per week at another applicable large employer member of the same applicable large employer would be a full-time employee for that calendar month.

Commenters requested that an employee's status as a full-time employee be determined separately for each applicable large employer member based upon the employee's hours of service at each particular applicable large employer member. The final regulations do not adopt such a rule because it would often produce inequitable results by classifying an employee performing at least 30 hours of service per week for closely related applicable large employer members (for example, two corporations that are wholly-owned by another entity or individual) as not a full-time employee while classifying other employees working the same number of hours of service for one of those entities as full-time employees. For a discussion of how any assessable payment under section 4980H for a calendar month would be allocated among applicable large employer members if a full-time employee performed services for two or more applicable large employer members during the same calendar month, see section X of this preamble. For a discussion of how one applicable large employer member's offer of coverage applies to other applicable large employer members in the same applicable large employer, see section IX of this preamble.

*B. Monthly Measurement Method*

Commenters requested further information about the identification of full-time employees by employers electing not to use the look-back measurement method. Pursuant to the statute, these full-time employees would be identified based on the hours of service for each calendar month; accordingly, these regulations refer to this method of identifying full-time employees as the monthly measurement method.

Under the look-back measurement method set forth in the proposed regulations, if an employee is reasonably expected at his or her start date to be a full-time employee, an employer that sponsors a group health plan that offers coverage to the employee at or before the conclusion of the employee's initial three full calendar months of employment will not be subject to an assessable payment under section 4980H by reason of its failure to offer coverage to the employee for up to the initial three full calendar months of employment. See section VII.D of this preamble for a discussion of clarifications made to this rule in the final regulations. In developing the final regulations, the Treasury Department and the IRS considered whether a similar rule should be provided under the monthly measurement method.

Under the monthly measurement method in the final regulations, an employer will not be subject to an assessable payment under section 4980H(a) with respect to an employee because of a failure to offer coverage to that employee before the end of the period of three full calendar months beginning with the first full calendar month in which the employee is otherwise eligible for an offer of coverage under a group health plan of the employer if the employee is offered coverage no later than the day after the end of that three-month period. If the coverage for which the employee is otherwise eligible provides MV, the employer also will not be subject to an assessable payment under section 4980H(b) during that three-month period. For this purpose, an employee is otherwise eligible for an offer of coverage in a month if the employee meets all conditions to be offered coverage under the plan other than the completion of a waiting period, within the meaning of § 54.9801–2.[8] This rule applies only once per period of employment of an employee and applies with respect to each of the three full calendar months for which the employee is otherwise eligible for an offer of coverage under a group health plan of the employer. Accordingly, the relief may be available even if the employee terminates before that date (and before coverage is offered).

To avoid inequitable application of the rule that applies to employees who are first otherwise eligible for an offer of coverage by characterizing former employees as rehired employees after a short period of absence, the final regulations clarify that under the monthly measurement method, an employee must be treated as a continuing employee, rather than a new hire, unless the employee has had a period of at least 13 weeks during which no hours of service were credited (26 weeks for an employee of an employer that is an educational organization). At the employer's option, the employee may be treated as a new hire if the employee is not credited with any hours of service during a period that is both at least four consecutive weeks' duration and longer than the employee's immediately preceding period of employment. For a description of the rehire rules, see section VII.E of this preamble.

In determining how an employer should treat periods during which an employee is not credited with hours of service, the final regulations clarify that under the monthly measurement method, the special unpaid leave and employment break period rules do not apply. That is because determinations under the monthly measurement method are based on hours of service during that particular calendar month and are not based on averaging over a prior measurement period. For a description of the special unpaid leave and employment break period rules see section VII.E.2 of this preamble.

Commenters requested that the monthly measurement method be applied in a manner that approximated or otherwise took into account payroll periods. To provide additional flexibility and reduce administrative burden on employers, the final regulations allow an employer to determine an employee's full-time employee status for a calendar month under the monthly measurement method based on the hours of service over successive one-week periods. Under this optional method, referred to as the weekly rule, full-time employee status for certain calendar months is based on hours of service over four-week periods and for certain other calendar months on hours of service over five-week periods. In general, the period measured for the month must contain either the week that includes the first day of the month or the week that includes the last day of the month, but not both. For this purpose, week means any period of seven consecutive calendar days applied consistently by the applicable large employer member for each calendar month of the year. For calendar months calculated using four week periods, an employee with at least 120 hours of service is a full-time employee, and for calendar months calculated using five week periods, an employee with at least 150 hours of service is a full-time employee. However, for purposes of coordination with both the premium tax credit and the section 5000A individual shared responsibility provisions, which are applied on a calendar month basis, an applicable large employer member is only treated as having offered coverage under section 4980H for a calendar month if it offers coverage to a full-time employee for the entire calendar month, regardless of whether the employer uses the weekly rule.

*C. Look-Back Measurement Method*

1. In General

The proposed regulations provide a method, referred to as the look-back measurement method, under which employers may determine the status of an employee as a full-time employee during a future period (referred to as the stability period), based upon the hours of service of the employee in a prior period (referred to as the measurement period). The look-back measurement method for identifying full-time employees is available only for purposes of determining and computing liability under section 4980H and not for purposes of determining status as an applicable large employer.

Under the look-back measurement method for ongoing employees, an applicable large employer member determines each ongoing employee's full-time employee status by looking back at a standard measurement period of at least three months but not more than 12 months, as determined by the employer. The applicable large employer member determines the months in which the standard measurement period starts and ends, provided that the determination must be made on a uniform and consistent basis for all employees in the same category. If the applicable large employer member determines that an employee was employed on average at least 30 hours of service per week during the standard measurement period, then the applicable large employer member treats the employee as a full-time employee during a subsequent stability period, regardless of the employee's number of hours of service during the stability period, so long as the worker remains an employee.

The proposed regulations also provide look-back measurement method rules for new employees, including rules for employees who are reasonably expected to be full-time employees at the start date, and those who are variable hour employees or seasonal employees. A variable hour employee or seasonal employee will have his or her status as a full-time employee determined after an initial measurement period. The proposed regulations then provide transition guidance under which a new employee transitions into having his or her status as a full-time employee determined under the look-back measurement method rules applicable to ongoing employees.

Although some commenters suggested that the look-back measurement method

[8] Section 54.9801–2 provides definitions for terms used in chapter 100 of the Code (sections 9801 through 9834). Currently the definition of the term *waiting period* at § 54.9801–2 contains a cross reference to the definition of the term *waiting period* at § 54.9801–3(a)(3)(iii). Proposed regulations published March 21, 2013, 78 FR 17313, would amend that cross reference to refer to § 54.9815–2708(b) and to remove the definition at § 54.9801–3(a)(3)(iii), and would add § 54.9815–2708 which would include a definition of the term *waiting period* at § 54.9815–2708(b). Thus, § 54.9801–2 provides the relevant definition of the term *waiting period,* and will continue to provide the relevant definition if revised as proposed.

of identifying full-time employees be eliminated, other commenters requested that it be retained. The look-back measurement method is intended as a method of crediting employees with hours of service they earn (during a measurement period) while also providing employers predictability in being able to identify full-time employees before the beginning of a potential coverage period (during a stability period). After reviewing the comments, the Treasury Department and the IRS have concluded that this method provides a practical and fair method for determining average hours of service that will facilitate compliance with section 4980H. Accordingly, the final regulations continue to permit a look-back measurement method as an optional method for identifying full-time employees.

2. Reasonable Expectations With Respect to a New Employee

Under both the proposed regulations and the final regulations, the application of the look-back measurement method to a new employee depends on the employer's reasonable expectations with respect to the status of the new employee at his or her start date. Under the final regulations, if a new employee who is reasonably expected to be a full-time employee at his or her start date is offered coverage by the first day of the month immediately following the conclusion of the employee's initial three full calendar months of employment (and if the employee was otherwise eligible for an offer of coverage during those three months), the employer is not subject to a section 4980H assessable payment for those initial three full calendar months of employment (or for the period prior to the initial three full calendar months of employment), provided that to avoid liability under section 4980H(b) for the initial three full calendar months, the coverage offered after the initial three full calendar months of employment must provide MV. Otherwise, with respect to a new employee who is reasonably expected to be a full-time employee at his or her start date, the employer may be subject to a section 4980H assessable payment beginning with the first full calendar month in which an employee is a full-time employee.

Commenters requested further guidance on the circumstances under which an employer may reasonably expect a new hire to be a full-time employee. In response to these comments, the final regulations provide that whether an employer's determination that a new hire is not a full-time employee (or is a full-time employee) is reasonable is based on the facts and circumstances. Factors to consider include, but are not limited to, whether the employee is replacing an employee who was or was not a full-time employee, the extent to which employees in the same or comparable positions are or are not full-time employees, and whether the job was advertised, or otherwise communicated to the new hire or otherwise documented (for example, through a contract or job description), as requiring hours of service that would average 30 (or more) hours of service per week or less than 30 hours of service per week.

Commenters also requested that employers that are educational organizations be prohibited from taking potential employment break periods into account in determining their expectations of future hours of service. For a description of the employment break period rule, see section VII.E.2 of this preamble. The final regulations clarify that educational organization employers cannot take into account the potential for, or likelihood of, an employment break period in determining their expectations of future hours of service.

3. Administrative Period

Under the proposed and final regulations, an applicable large employer member using the look-back measurement method may, at its option, elect to add an administrative period of no longer than 90 days between the measurement period and the stability period. Under the proposed regulations, the term *administrative period* is defined as an optional period, selected by an applicable large employer member, of no longer than 90 days beginning immediately following the end of a measurement period and ending immediately before the start of the associated stability period. However, the proposed regulations also provide that the period between a variable hour or seasonal employee's start date and the beginning of the initial measurement period must be taken into account in determining the administrative period. The definition of administrative period in the final regulations is revised to reflect that it also includes periods before the initial measurement period. Thus, the combined length of the period before the start of the initial measurement period and the period beginning immediately after the end of the initial measurement period and ending immediately before the beginning of the associated stability period is subject to an overall limit of 90 days.

Commenters requested that the maximum permissible administrative period be extended from 90 days to three full calendar months. The proposed regulations regarding the administrative period in these circumstances were intended to allow employers to structure their plans to coordinate with section 2708 of the PHS Act (relating to the application of the 90-day limitation on waiting periods) in all circumstances. For this reason, the final regulations do not adopt this suggestion.

4. Rules for Full-Time Employee's Stability Periods That Are Longer Than the Associated Measurement Periods

In general, under the proposed regulations, the minimum length of a measurement period is three months but the minimum length of a stability period for an employee who is a full-time employee based on hours of service in a measurement period is six months. Commenters requested that a three-month stability period be permitted if the employer uses a three-month measurement period and the employee is determined to be a full-time employee during the measurement period. The Treasury Department and the IRS remain concerned that permitting stability periods as short as three months for employees who are full-time employees based on hours of service in the measurement period could lead to employees moving in and out of employer coverage (and potentially Exchange coverage) multiple times during the year, which would be undesirable from both the employee's and employer's perspective, and could also create administrative challenges for the Exchanges. Accordingly, this suggestion is not adopted.

Commenters also asked for clarification of the measurement period that may be used for the subsequent six-month stability period in cases in which a less-than-six month measurement period is used (such as a three-month measurement period) and the employee averages at least 30 hours of service per week during the measurement period, so that a stability period of at least six months must be applied. The final regulations clarify that the stability period refers to the period immediately following the measurement period and any associated administrative period. Therefore, for employees who average at least 30 hours of service per week during a measurement period, who thus must be treated as full-time employees during an associated six-month stability period, the next measurement period

begins at a date during the stability period that is the latest date that will not result in any period between the end of that stability period and the beginning of the next stability period associated with the next measurement period. For example, suppose an employer uses a three-month measurement period consisting of January through March of Year 1, followed by a one month administrative period consisting of April of Year 1. In this example, employees who average 30 hours of service per week during the measurement period consisting of January through March of Year 1 must be treated as full-time employees during a six-month stability period consisting of May through October of Year 1. Under the final regulations, the next measurement period would be July through September of Year 1, the associated administrative period would be October of Year 1, and the next associated stability period would begin immediately at the end of the administrative period. Thus, the stability period for employees determined to be full-time employees during the measurement period consisting of July through September of Year 1 would consist of November of Year 1 through April of Year 2 and there would be no period between the end of the first stability period (October 31 of Year 1) and the beginning of the next stability period (November 1 of Year 1). For ongoing employees that do not average at least 30 hours of service per week during a measurement period, the length of the stability period cannot exceed the length of the measurement period.

5. Employee Categories To Which Different Measurement and Stability Periods May Be Applied

The proposed regulations permit an employer to use measurement periods and stability periods that differ either in length or in their starting and ending dates for different categories of employees specified in the regulations, provided that the employees within each category are treated consistently. The categories specified in the proposed regulations are salaried employees and hourly employees, employees whose primary places of employment are in different states, collectively bargained employees and non-collectively bargained employees, and each group of collectively bargained employees covered by a separate collective bargaining arrangement. Commenters requested that these categories be expanded to, for example, any category established in good faith and consistent with business practices, any category of hourly employees based on payroll classifications, any category of employees of employers in an industry that demonstrates higher turnover than other industries, and any category of employees with turnover that is higher than other categories. The final regulations do not adopt these requests because of the associated administrative difficulties.

Notice 2012–58 had also included employees of different entities as a separate category of employees. The preamble to the proposed regulations provides that because section 4980H generally is applied on an applicable large employer member-by-member basis, including the method of identifying full-time employees, there is no need for a distinct category for employees of different entities, as each such member is a separate entity. However, comments to the proposed regulations requested that the final regulations confirm that different applicable large employer members may use different starting and ending dates and lengths of measurement and stability periods. In response, the final regulations include this confirmation as well as confirmation that different applicable large employer members may use different measurement methods (the look-back measurement method or the monthly measurement method).

6. Variable Hour Employees

As described in the preamble to the proposed regulations, with respect to certain positions of employment, employers have indicated that they could not determine at the start date whether the employee would be a full-time employee because an employee's hours of service in that position may vary significantly. Particularly in the hospitality and retail industries, employers requested that they be permitted to determine full-time employee status for employees whose hours may vary significantly by first considering hours of service for a period of time after the start date. In response to these comments made to the notices published before the proposed regulations, the proposed regulations generally provide that with respect to these employees, referred to as variable hour employees, an employer could use an initial measurement period, in combination with any administrative period, that did not extend beyond the last day of the first calendar month beginning on or after the first anniversary of the employee's start date. The proposed regulations treat an employee as a variable hour employee if, based on the facts and circumstances at the employee's start date, the applicable large employer member cannot determine whether the employee is reasonably expected to be employed on average at least 30 hours of service per week during the initial measurement period because the employee's hours of service are variable or otherwise uncertain. For this purpose, the applicable large employer member may not take into account the likelihood that the employee may terminate employment with the applicable large employer (including any member of the applicable large employer) before the end of the initial measurement period. See proposed § 54.4980H–1(a)(43).

Commenters, generally representing employee organizations, suggested that the treatment provided to variable hour employees be removed. In general, these commenters suggested that employers would categorize an excessive number of employees as variable hour employees in order to take advantage of the ability to avoid section 4980H liability while not offering coverage during the first year of employment. These final regulations retain the treatment of variable hour employees because with respect to certain positions of employment involving variable hours, it is not reasonable to require that an employer assume what those hours will be. In response to the comments, however, the final regulations explicitly set forth certain factors to take into account in determining whether the employer, at the employee's start date, could not determine whether the employee was reasonably expected to be employed on average at least 30 hours of service per week during the initial measurement period. These factors are described in section VII.C.2 of this preamble and are set forth at § 54.4980H–1(a)(49).

7. Temporary Staffing Firms

The preamble to the proposed regulations notes that the application of section 4980H may be particularly challenging for temporary staffing firms and requested comments on certain specific areas relevant to temporary staffing firms, including whether new employees of a temporary staffing firm should be deemed or presumed to be variable hour employees for purposes of the look-back measurement method as well as whether special rules should apply to temporary staffing firms for purposes of determining when an employee has separated from service and the application of the rehire rules when an employee returns after a break in service. See section VII.E of the preamble for a discussion of the rehire rules.

Some commenters requested that new employees of a temporary staffing firm be deemed, or alternatively presumed, to be variable hour employees rather than full-time employees for purposes of the look-back measurement method. Other commenters opposed the use of any presumption that employees of temporary staffing firms are variable hour employees, arguing that some of these employees will work predictable schedules averaging at least 30 hours of service per week. Temporary staffing firms vary widely in the types of assignments they fill for their clients and in the anticipated assignments that a new employee will be offered. Accordingly, the final regulations do not adopt a generally applicable presumption.

To accommodate these variations and provide additional guidance, the final regulations set forth additional factors relevant to the determination of whether a new employee of a temporary staffing firm intended to be placed on temporary assignments at client organizations is a variable hour employee. These factors generally relate to the typical experience of an employee in the position with the temporary staffing firm that hires the new employee (assuming the temporary staffing firm employer has no reason to anticipate that the new employee's experience will differ) and include whether employees in the same position with the temporary staffing firm retain as part of their continuing employment the right to reject temporary placements that the employer temporary staffing firm offers the employee, whether employees in the same position with the temporary staffing firm typically have periods during which no offer of temporary placement is made, whether employees in the same position with the temporary staffing firm typically are offered temporary placements for differing periods of time, and whether employees in the same position with the temporary staffing firm typically are offered temporary placements that do not extend beyond 13 weeks. As demonstrated in the modified and additional examples related to temporary staffing firms, no factor is determinative. In addition, the determination of whether an employee is a variable hour employee is made on the basis of the temporary staffing firm's reasonable expectations at the start date. An employee may accordingly be classified as a variable hour employee if this categorization was appropriate based on the employer's reasonable expectations at the start date, even if the employee in fact averages 30 or more hours of service per week over the initial measurement period.

Commenters suggested that the rehire rules should be adjusted for employees of temporary staffing firms by reducing the length of the break in service required before an employee can be treated as a new hire from 26 weeks to 4 weeks or some other duration. The final regulations do not adopt this suggestion in part because the adoption of such a rule may encourage employers to use temporary staffing firms to provide firm employees to perform certain services in order to attempt to improperly avoid offering coverage or incurring liability for assessable payments under section 4980H. For a discussion of the reduction of the break-in-service period under the rehire rules from 26 weeks to 13 weeks for all employers that are not educational organizations see section VII.E of this preamble.

Commenters requested additional guidance on when a temporary staffing firm may treat an employee who is not working on assignments as having separated from service with the firm. Separation from service is relevant in a number of contexts beyond section 4980H, such as eligibility to receive a distribution from a qualified plan (see, for example, section 401(k)(2)(B)(i)(l)) and the requirement to provide a notice of continuation coverage under COBRA (see section 4980B), and temporary staffing firm employers generally have developed various means of determining when an employee has separated from service with the firm for these purposes. Accordingly, until further guidance is issued, temporary staffing firms, like all employers generally, may determine when an employee has separated from service by considering all available facts and circumstances and by using a reasonable method that is consistent with the employer's general practices for other purposes, such as the qualified plan rules, COBRA, and applicable State law. For a discussion of the rehire rules that apply under section 4980H, see section VII.E of this preamble.

Section II.D.3 of the preamble to the proposed regulations addresses two arrangements under which a client employer may use a temporary staffing firm to attempt to evade application of section 4980H. In one arrangement, the client employer purports to employ an employee for only part of a week, such as 20 hours, and to hire that same individual through a temporary staffing firm for the remaining hours of the week, and then claim that the individual was not a full-time employee of either the client employer or the temporary staffing firm. In the other arrangement, one temporary staffing firm purports to supply a client an individual as a worker for only part of a week, such as 20 hours, while a second temporary staffing firm purports to supply the same client the same individual for the remainder of the week, and then claim that the individual was not a full-time employee of the client or either of the temporary staffing firms. For these reasons and the reasons set forth in section II.D.3 of the preamble to the proposed regulations, the Treasury Department and the IRS continue to be concerned about these arrangements and anticipate that future guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)), will address them.

8. Seasonal Employees

Under the proposed and final regulations, the look-back measurement method, including the use of the initial measurement period for a newly hired employee, may be applied by an employer to its seasonal employees in the same manner in which the rules apply to variable hour employees. The proposed regulations do not provide a definition of the term *seasonal employee* but rather reserve on the issue. Section II.C.2.b of the preamble to the proposed regulations indicates that employers are permitted through 2014 to use a reasonable, good faith interpretation of the term *seasonal employee* for purposes of section 4980H. The preamble further states that the Treasury Department and the IRS contemplated that the final regulations would add to the definition of seasonal employee a specific time limit in the form of a defined period, citing the final sentence of § 1.105–11(c)(2)(iii)(C) as an example that could be adapted for purposes of section 4980H. The Treasury Department and the IRS specifically requested comments on this approach.

Commenters generally supported the proposed treatment of seasonal employees, but had varying notions of the appropriate time limit for a recurring period of service for a seasonal employee, ranging from 45 days to ten months. Consistent with the proposed regulations, the final regulations continue to provide for seasonal employees to be treated under the same rules applicable to variable hour employees. For this purpose, the final regulations provide that a seasonal employee means an employee in a position for which the customary annual employment is six months or less. The reference to customary means

that by the nature of the position an employee in this position typically works for a period of six months or less, and that period should begin each calendar year in approximately the same part of the year, such as summer or winter. In certain unusual instances, the employee can still be considered a seasonal employee even if the seasonal employment is extended in a particular year beyond its customary duration (regardless of whether the customary duration is six months or is less than six months). For example, if ski instructors at a resort have a customary period of annual employment of six months, but are asked in a particular year to work an additional month because of an unusually long or heavy snow season, they would still be considered seasonal employees.

An employee in a seasonal position might be promoted or transferred to a permanent position. For example, a ski instructor might be moved to the position of grounds manager, which is anticipated to work year round. Under the final regulations, in general, if a seasonal employee experiences a change in employment status before the end of the initial measurement period in such a way that, if the employee had begun employment in the new position or status, the employee would not have been a seasonal employee (and would have reasonably been expected to be employed on average at least 30 hours of service per week), the employer has until the first day of the fourth month following the change in employment status, or, if earlier, the first day of the first month following the end of the initial measurement period (plus any applicable administrative period) if the employee averaged 30 hours of service per week or more during the initial measurement period, to treat the employee as a full-time employee.

9. Modification of Measurement Periods or Stability Periods To Consolidate Coverage Entry Dates

Commenters requested that the initial measurement period be modified to account for plan designs that consolidate employees into particular entry dates, such as the first day of a pay period, the first day of the month, etc. Specifically these commenters requested that the initial measurement period be permitted to begin on the employee's start date in a period, such as a calendar quarter, but end on a common date, such as 12 months after the beginning of the calendar quarter, and employers be allowed to couple this approach with a uniform stability period. This proposed structure would often result in a stability period significantly longer than the associated measurement period. In this example, all employees starting during the calendar quarter would have a 12 month stability period, whether they started in the first month of the quarter or the last month of the quarter. With respect to an employee who does not have sufficient hours of service to be classified as a full-time employee, the Treasury Department and the IRS have consistently stated that it is not appropriate to apply that status for a longer period than the measurement period. In addition, the proposed approach would add considerable complexity to the rules governing the look-back measurement method. However, consistent with the proposed regulations, the final regulations provide that the initial measurement period for a new variable hour employee or new seasonal employee may begin on the employee's start date or any date after that up to and including the first day of the first calendar month following the employee's start date (or, if later, as of the first day of the first payroll period beginning on or after the employee's start date). Effectively, this allows employers to group new hires into 12 groups throughout the year for purposes of determining the initial measurement period. For these reasons, the final regulations retain the rule in the proposed regulations and do not adopt the commenters' suggestion.

10. Change in Employment Status

The proposed regulations for the look-back measurement method contain a change in employment status rule for a variable hour or seasonal employee who experiences a change in employment status during the initial measurement period such that, if the employee had begun employment in the new position or status, the employee would have reasonably been expected to be employed on average at least 30 hours of service per week. With respect to such an employee, in general, the employer will not be subject to an assessable payment for such an employee until the first day of the fourth full calendar month following the change in employment status if the employer provides coverage at the end of that period (and to avoid liability under section 4980H(b) the coverage provides MV) or, if earlier and the employee is a full-time employee based on the initial measurement period, the first day of the first month following the end of the initial measurement period (including any optional administrative period associated with the initial measurement period). Under the final regulations, this rule is revised to also apply to an employee who has a change in employment status from part-time employee to full-time employee during the initial measurement period. For a description of the requirement that the employee be otherwise eligible for an offer of coverage during the period described in this paragraph, see section VII.D of this preamble.

Commenters to the proposed regulations requested additional rules for how the look-back measurement method applies when an employee experiences various changes in employment status. As described in this section VII.C.10 of the preamble, the final regulations revise the change in employment status rule that applies during the initial measurement period for new employees who experience a change in employment status resulting in full-time employee status. The final regulations also provide a special rule, discussed in section VII.G of this preamble, that applies when an employee experiences a change in employment status from full-time employee status to part-time employee status; the employer is allowed to apply the monthly measurement method to such an employee within three months of the change if the employee actually averages less than 30 hours of service per week for each of the three months following the change in employment status and if the employer has offered the employee continuous coverage that provides MV from at least the fourth month of the employee's employment. Otherwise, under the look-back measurement method, full-time employee status in a stability period is based on hours of service in the prior applicable measurement period, regardless of whether the employee experiences a change in employment status either during the measurement period or during the stability period. Under the look-back measurement method, each employee's hours of service are measured (not just variable hour employees and seasonal employees) during the measurement period. In general, under the look-back measurement method, if the change in employment status results in a change in hours of service, that change is captured in a subsequent stability period. For a description of the rules regarding the use of the look-back measurement method for only some of an employer's employees, see section VII.G of this preamble.

11. New Employees Who Are Neither Variable Hour Employees nor Seasonal Employees

Under the proposed and final regulations, an ongoing employee is an

employee who has been employed by an applicable large employer member for at least one complete standard measurement period. The proposed regulations provide rules for application of the look-back measurement method to new employees who are variable hour employees and seasonal employees but the proposed rules do not fully explain how full-time employee status is determined for other new employees. The final regulations clarify how an applicable large employer member determines full-time employee status of its new employees who are not variable hour employees or seasonal employees, for the period before the rules for ongoing employees apply (that is, for the period before the employee has been employed for a complete standard measurement period).

In general, before becoming an ongoing employee, full-time employee status for a new employee who is reasonably expected at the employee's start date to be a full-time employee (and who is not a seasonal employee) is based on that employee's hours of service each calendar month (but note that an employer will not be subject to a section 4980H(a) assessable payment for the initial three full months of employment if the employee is otherwise eligible for an offer of coverage during those three months and is offered coverage by the first day following those three months (and the employer will not be subject to a section 4980H(b) assessable payment for those months if the coverage offered provides MV).

A definition of part-time employee is added to the final regulations for a new employee who is reasonably expected at the employee's start date not to be a full-time employee (and who is not a variable hour employee or a seasonal employee). The same rules that apply to new variable hour employees and new seasonal employees apply to new part-time employees. In the normal case, an employer's categorization of a new employee as a part-time employee or variable hour employee does not affect the way the look-back measurement method applies (because the initial measurement period is available to both types of employees).

12. Clarifications Regarding the Initial Measurement Period

The final regulations clarify that an applicable large employer member may apply the payroll period rule set forth in § 54.4980H–3(d)(1)(ii) for purposes of determining an initial measurement period, provided that an initial measurement period must begin on the start date or any date between the start date and the later of the first day of the first calendar month following the employee's start date and the first day of the first payroll period that starts after the employee's start date.

The proposed regulations define the initial measurement period, in part, as a period of at least three consecutive calendar months but not more than 12 consecutive calendar months. The final regulations clarify that the initial measurement period need not be based on calendar months but instead may be based on months, defined as either a calendar month or as the period that begins on any date following the first day of the calendar month and that ends on the immediately preceding date in the immediately following calendar month (for example, from March 15 to April 14). In contrast, a stability period must be based on calendar months. The final regulations, consistent with the proposed regulations, also allow an employer to base measurement periods on one week, two week, or semi-monthly payroll periods.

13. Periods of Time Between Stability Periods

Commenters noted that, in certain circumstances, there may be a period of time between the stability period associated with the initial measurement period and the stability period associated with the first full standard measurement period during which a variable hour employee or seasonal employee has been employed. This generally may occur in cases in which a new employee begins providing services a short period after the beginning of the standard measurement period that would apply to the employee if the employee were an ongoing employee.

For example, suppose an employer uses 12-month measurement and stability periods for both its new variable hour employees and its ongoing employees, with the standard measurement period for ongoing employees running from October 15 of one year to the following October 14, the administrative period for ongoing employees running from October 15 through December 31 and with the calendar year as the stability period for ongoing employees. If a new variable hour employee, Employee A, is hired on October 25, 2015, and the employer chooses to begin the initial measurement period for new variable hour employees on the first day of the first calendar month beginning after the start date, the initial measurement period for Employee A will run from November 1, 2015, through October 31, 2016. If Employee A averages at least 30 hours of service per week during the initial measurement period, the employer must treat Employee A as a full-time employee for a period of at least 12 months beginning no later than December 1, 2016 (the first day of the 14th calendar month after hire). If that period begins on December 1, 2016, the period for which Employee A must be treated as a full-time employee will end no earlier than November 30, 2017.

The first standard measurement period applicable to Employee A is the period from October 15, 2016, through October 14, 2017. If Employee A averages 30 hours of service per week during this standard measurement period, the employer must treat Employee A as a full-time employee for the stability period that is co-extensive with the 2018 calendar year. However, this would leave a period of time between the end of the stability period associated with Employee A's initial measurement period (November 30, 2017) and the beginning of the stability period associated with the first standard measurement period applicable to Employee A (January 1, 2018).

The final regulations clarify that in circumstances in which there is a period of time between the stability period associated with the initial measurement period and the stability period associated with the first full standard measurement period during which a new employee is employed, the treatment as a full-time employee or not full-time employee that applies during the stability period associated with the initial measurement period continues to apply until the beginning of the stability period associated with the first full standard measurement period during which the employee is employed. If the employee is being treated as a full-time employee during the initial stability period, that treatment must be extended until the first day of the stability period associated with the first full standard measurement period during which the employee is employed, and if the employee is being treated as not a full-time employee during the initial stability period, that treatment may be extended until the first day of the stability period associated with the first full standard measurement period during which the employee is employed. Thus, in the example in the preceding paragraphs, Employee A is a full-time employee for the month of December 2017.

Further, the final regulations also clarify that for a variable hour employee or seasonal employee who does not average at least 30 hours of service per week during the initial measurement period, the maximum length for a

stability period associated with the initial measurement period is the end of the first full standard measurement period (plus any associated administrative period) during which the new employee was employed (rather than at the end of the standard measurement period (plus any associated administrative period) in which the initial measurement period ends), which was the rule contained in the proposed regulations.

*D. Clarification of Periods During Which Section 4980H Liability Does Not Apply*

In various circumstances, the final regulations provide that an employer will not be subject to an assessable payment under section 4980H for a certain period of time and the term *limited non-assessment period for certain employees* is added to the final regulations to describe these periods. In particular, the final regulations provide, consistent with the proposed regulations, that section 4980H liability does not apply with respect to an employee who is in the initial measurement period (or the associated administrative period), for a period of time after an employee experiences a change to full-time employee status during the initial measurement period, or with respect to a new employee who is reasonably expected to be a full-time employee and to whom coverage is offered on the first of the month following the employee's initial three full calendar months of employment. The final regulations add a rule under the monthly measurement method under which an employer will not be subject to a section 4980H assessable payment with respect to an employee for the first full calendar month in which an employee is first otherwise eligible for an offer of coverage and the immediately subsequent two calendar months. Further, the final regulations provide that with respect to an employee who was not offered coverage by the employer at any point during the prior calendar year, if an employee is offered coverage by an applicable large employer, for the first time, on or before April 1 of the first calendar year for which the employer is an applicable large employer, the employer will not be subject to an assessable payment under section 4980H by reason of its failure to offer coverage to the employee for January through March of that year.

The final regulations clarify that each of these rules is only available if the employee is offered coverage by the first day of the month following the end of the applicable period, and for an employer to not be subject to an assessable payment under section 4980H(b) the employer must offer coverage that provides MV at the end of the period.

In addition, the final regulations clarify that these rules only apply with respect to a calendar month if during the calendar month during the relevant period the employee is otherwise eligible for an offer of coverage (except that this rule does not apply with respect to the rule regarding an employer that is an applicable large employer for the first time, as described in section V.F of this preamble). For purposes of these rules, an employee is otherwise eligible to be offered coverage under a group health plan for a calendar month if, pursuant to the terms of the plan as in effect for that calendar month, the employee meets all conditions to be offered coverage under the plan for that calendar month, other than the completion of a waiting period, within the meaning of § 54.9801–2.

The final regulations also clarify that an employer will not be subject to an assessable payment with respect to an employee for the first month of an employee's employment with the employer, if the employee's first day of employment is a day other than the first day of the calendar month.

Note that the relief from the section 4980H assessable payment provided by the rules described in this section does not affect an employee's eligibility for a premium tax credit. For example, an employee or related individual is not eligible for coverage under the employer's plan (and therefore may be eligible for a premium tax credit or cost-sharing reduction through an Exchange) during any period when coverage is not actually offered to the employee by the employer, including any measurement period or administrative period, even if the employer is not subject to an assessable payment under section 4980H for this period.

*E. Rehire Rules and Break-in-Service Rules for Continuing Employees*

1. Rehire Rules

The proposed regulations provide that, solely for purposes of section 4980H, an employee who resumes providing service to an applicable large employer after a period during which the employee was not credited with any hours of service may be treated as having terminated employment and having been rehired, and therefore may be treated as a new employee upon the resumption of services, only if the employee did not have an hour of service for the applicable large employer for a period of at least 26 consecutive weeks immediately preceding the resumption of services.

In addition, the proposed regulations permit an employer to apply a parity rule, under which an employee may be treated as rehired after a shorter period of at least four consecutive weeks during which no hours of service were credited if that period exceeded the number of weeks of that employee's period of employment with the applicable large employer immediately preceding the period during which the employee was not credited with any hours of service. For example, if an employee started employment and worked for six weeks, then had a period of eight weeks during which no hours of service were credited, the employer could treat the employee as a rehired employee, subject to the rules for new employees under these regulations, if the employee resumed providing services after the eight-week break.

Comments were received on these rehire rules. Several employers and employer groups commented that the rehire rules in general, and the rule of parity in particular, are difficult to implement because they require the employer to maintain records of service of former employees across the employer's controlled group (the group of applicable large employer members that together are treated as an applicable large employer). Commenters requested that employers be permitted to determine, using any reasonable good-faith method, whether an employee resuming services after a break in service constitutes a new employee or a continuing employee. Other commenters requested that the length of the break in service required before a returning employee may be treated as a new employee be reduced from 26 weeks to some shorter length, such as four or ten weeks.

The Treasury Department and the IRS believe that it would be inequitable to employees who had become eligible for coverage prior to the break in service to be subjected to a new period of exclusion from the plan (which can be over a year for variable hour employees) based upon a brief break in service. The Treasury Department and the IRS also remain concerned that without an objective standard for determining when an employee who returns after a break in service may be treated as a new employee, there is a potential for an employer to attempt to evade the requirements of section 4980H through a pattern of terminating and rehiring employees and then treating the returning employees as new employees. However, the Treasury Department and the IRS agree with the commenters

suggesting that a break-in-service period shorter than 26 weeks would be sufficient to curtail the potential for abuse. Accordingly, the final regulations retain the rehire rules contained in the proposed regulations but reduce the length of the break in service required before a returning employee may be treated as a new employee from 26 weeks to 13 weeks (except for educational organization employers as described in this section of the preamble). This break-in-service period applies for both the look-back measurement method and the monthly measurement method.

To avoid the treatment of employees of educational organizations as new employees resuming services after a scheduled academic break, however, the final regulations provide that for employees of educational organizations, the 26-week break-in-service period under the rehire rules provided in the proposed regulations continues to apply.

The final regulations also retain the rule of parity, which, as under the proposed regulations, is optional on the part of the employer and need not be used if the employer does not maintain sufficient records of the periods of service of former employees or prefers not to use it for other reasons.

2. Break-in-Service Rules for Continuing Employees (Special Unpaid Leave Rule and Employment Break Period Rule)

For purposes of applying the look-back measurement method to a returning employee not treated as a new employee, the proposed regulations provide an averaging method for special unpaid leave that is applicable to all employers choosing to use the look-back measurement method. For this purpose special unpaid leave is unpaid leave subject to the Family and Medical Leave Act of 1993 (FMLA), Public Law 103–3, 29 U.S.C. 2601 et seq., or to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103–353, 38 U.S.C. 4301 et seq., or on account of jury duty. Comments were received on the averaging rules for special unpaid leave, and those comments generally favored the approach provided in the proposed regulations.

The proposed regulations also provide an averaging method for employment break periods that is applicable to educational organizations that use the look-back measurement method. For this purpose, an employment break period is a period of at least four consecutive weeks (disregarding special unpaid leave), measured in weeks, during which an employee is not credited with hours of service.

Under the proposed averaging method, in the case of an employee returning from absence who would be treated as a continuing employee (that is, an employee whose break in service was shorter than one resulting in treatment as a rehired employee), the employer would determine the employee's average hours of service for a measurement period by computing the average after excluding any special unpaid leave (and in the case of an educational organization, also excluding any employment break period) during that measurement period and by using that average as the average for the entire measurement period. Alternatively, the employer could treat the employee as credited with hours of service for any periods of special unpaid leave (and, in the case of an educational organization, any employment break period) during that measurement period at a rate equal to the average weekly rate at which the employee was credited with hours of service during the weeks in the measurement period that are not part of a period of special unpaid leave (or, in the case of an educational organization, an employment break period). The two alternative methods were intended to be different expressions of an equivalent calculation, therefore having the same results. In no case, however, would the employer be required to exclude (or credit) more than 501 hours of service during employment break periods in a calendar year (however no such limit applies for special unpaid leave).

In the preamble to the proposed regulations, the Treasury Department and the IRS specifically requested comments on whether the employment break period rules should be applied to all employers, including employers that were not educational organizations. With respect to the averaging rules for employment break periods, commenters differed in their responses to the proposed regulations. Some employers stated that the rules should be eliminated because they were complicated and required administrative recordkeeping that employers do not currently undertake. Some employers and employer groups also requested that the employment break period rules not be extended to employers that are not educational organizations. Other commenters requested clarification on whether the employment break period rules apply to employers that are not educational organizations but that provide services to educational organizations, such as school bus operators. In contrast, some employee organizations supported the employment break period rule, stating that it more accurately reflected positions intended to be full-time employee positions and assisted in curbing potential employer actions to prevent employees from attaining full-time employee status. However, some employers and employees also suggested that the employment break period rule would not result in an expansion of coverage to employees not currently offered coverage, but rather in limiting hours to ensure that those employees were not classified as full-time employees.

The final regulations retain the averaging rules for special unpaid leave and employment break periods as provided in the proposed regulations (that is, for purposes of applying the look-back measurement method to an employee who is not treated as a new employee under the rehire rules described in section VII.E.1 of this preamble). The commenters did not identify a compelling reason to extend the employment break period rule to employers that are not educational organizations. However, the final regulations provide that with respect to the determination of full-time employee status, the Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)), which may include extension of the employment break period to other industries. In addition, the reduction in the break-in-service period under the rehire rule from 26 to 13 weeks in the final regulations (for employers that are not educational organizations) shortens the periods for which an individual may be credited with no hours of service that can be included in a measurement period (thereby lowering the average hours of service per week), addressing in part the issue that the employment break period also is intended to address. The employment break period rule continues to apply only to educational organizations, and the break-in-service period for employees of educational organizations continues to be 26 weeks.

Neither the special unpaid leave rule nor the employment break period rule apply under the monthly measurement method, regardless of whether the employer is an educational organization.

*F. Short-Term and High-Turnover Employees*

1. Short-Term Employees

In the preamble to the proposed regulations, the Treasury Department and the IRS requested comments on the

treatment of short-term employees, meaning employees who are reasonably expected to average at least 30 hours of service per week and are hired into positions expected to continue for less than 12 months (but not including seasonal employees, who are employees in positions that also last a certain limited period but are expected to recur on an annual basis). A short-term employee with a tenure of under three months generally should not raise issues under section 4980H as the employer generally would not be subject to liability under section 4980H with respect to those employees provided the employer sponsors a group health plan for which the employee would have been eligible had the employee continued working beyond the three months. The Treasury Department and the IRS continue to be concerned about the potential for abuse of any exception for short-term employees through the use of initial training period positions or other methods intended to artificially divide the tenure of an employee into one or more short-term employment positions in order to avoid application of section 4980H. For these reasons, the final regulations do not adopt any special provisions applicable to short-term employees.

2. Employees in High-Turnover Positions

In the proposed regulations, the Treasury Department and the IRS requested comments on the treatment of employees in high-turnover positions, meaning positions in which a significant percentage of employees can be expected to terminate employment over a reasonably short period of time (for example, over a six-month period). Two categories of potentially high-turnover employees are already addressed in the final regulations. First, failure to offer coverage to full-time employees who do not continue in employment through the first day of the fourth month following the start date generally will not result in a potential payment under section 4980H if coverage would have been offered no later than the first day of the fourth month of employment. See § 54.4980H–3(c)(2) and § 54.4980H–3(d)(2)(iii). Second, failure to offer coverage to employees that are variable hour employees generally will not result in a section 4980H assessable payment under the look-back measurement method until after the last day of the first calendar month beginning on or after the first anniversary of the employee's start date, though the likelihood of the employee failing to continue employment through the initial measurement period may not be taken into account in determining whether the employee is a variable hour employee. See § 54.4980H–3(d)(3)(iii). This leaves at issue positions in which employees are reasonably expected to average 30 hours of service or more per week, and in which a significant portion of new hires are expected to continue in employment beyond three months but not for a significant period beyond three months.

As discussed in the preamble to the proposed regulations, the Treasury Department and the IRS have concerns about the formulation and application of a special rule in this area. Specifically, the discussion in section II.C.6 of the preamble to the proposed regulations noted that ''high-turnover'' is a category that would require a complex definition that could be subject to manipulation. In addition, any special treatment that is provided for employees hired into a high-turnover position could provide an incentive for employers to terminate employees to ensure that the position remains a high-turnover position under whatever standard was used to make that determination. Because many high-turnover positions may also be filled by variable hour employees for whom the rules governing variable hour employees would address the churning concerns, and because of the concerns regarding the complexity and potential manipulation of any special rules in this area, the final regulations do not adopt any special provisions addressing high-turnover positions.

*G. Employers Using Different Methods of Identifying Full-Time Employees for Different Categories of Employees*

Commenters requested clarification as to whether an employer must use the look-back measurement method for all employees if it chooses to use it for some employees or if an employer may use the look-back measurement method for some employees and the monthly measurement method for other employees. Commenters requested that employers have the ability to use the look-back measurement method for employees with variable work schedules and the monthly measurement method for employees with more predictable work schedules. According to these commenters, an employer's use of the look-back measurement method for its employees with fixed-hour schedules will produce the result that the employer is required to treat an employee as a full-time employee for a stability period if the fixed-hour full-time employee changes to a fixed-hour non-full-time schedule. They noted that such an employee may have been hired as a full-time employee and may have been provided coverage upon hire (or within three months), unlike variable hour employees for whom the employer generally has until the end of the first calendar month after the first anniversary of the employee's start date to offer coverage.

The final regulations clarify that with respect to each of the enumerated categories of employees for which an employer may use measurement and stability periods that differ either in length or in their starting and ending dates, the employer may apply either the look-back measurement method or the monthly measurement method. See section VII.C.5 of this preamble regarding the permissible employee category rule. The final regulations neither expand the number of categories of employees nor permit employers to develop their own customized categories. In particular, the final regulations do not permit an employer to adopt the look-back measurement method for variable hour and seasonal employees while using the monthly measurement method for employees with more predictable hours of service. Under the look-back measurement method, the identification of a variable hour employee at the start date is based upon the employer's reasonable expectations. If classified as a variable hour employee, the employer is permitted to wait through the initial measurement period to determine whether the employee is a full-time employee; however, for every subsequent year of that employee's employment the identification of whether the employee is a full-time employee is based upon the employee's hours of service in the prior measurement period, without any application of the employer's reasonable expectations. If employers were permitted to subdivide the permitted categories between variable hour employees and non-variable hour employees (for example, applying the look-back measurement method to variable hour salaried employees and the monthly measurement method to non-variable hour salaried employees), the employer would be required to apply its reasonable expectations at the beginning of every measurement period to determine whether a salaried employee was a variable hour employee. While the treatment of a new hire who does not have previous hours of service is necessary to address how to determine whether a new variable hour employee is a full-time employee, the Treasury Department and the IRS have determined that permitting employees

in the same objective category to move between measurement methods based solely on the employer's reasonable expectations brings an excessive level of subjectivity into the determination of an employee's classification as a full-time employee that is not warranted by any lack of information.

The final regulations also provide rules addressing an employee who experiences a change in employment status from a position for which the look-back measurement method is used to a position for which the monthly measurement method is used (or vice versa). In general, these rules are intended to protect an employee's status as a full-time employee during the transition period. Accordingly, these rules require that an employee transferring from a position for which the employer is using the look-back measurement method to a position for which the employer is using the monthly measurement method and who at the date of transfer is in a stability period during which the employee is treated as a full-time employee must continue to be treated as a full-time employee during the remainder of the stability period. If the employee is in a stability period for which the employee is not treated as a full-time employee, the employer may continue to treat the employee as not a full-time employee during the remainder of the stability period. With respect to the stability period that immediately follows the stability period during which the employee transferred, the employee must be treated as a full-time employee for any calendar month during which the employee would be a full-time employee under either the previously applicable look-back measurement method (and thus not lose the hours of service accumulated during the measurement period during which the transfer occurs) or the applicable monthly measurement method. After that immediately following stability period, the employer may determine the employee's status solely through application of the monthly measurement method.

For an employee transferring from a category of employment to which the monthly measurement method applies to a position to which the look-back measurement method applies, the rules generally require that the employer recreate the stability periods that would apply based upon the employee's hours of service before the transfer. However, consistent with the previously described rules, for the stability period immediately subsequent to the transfer, the employee must be treated as a full-time employee for any calendar month that the employee would be a full-time employee under either the previously applicable monthly measurement method or the applicable look-back measurement method. The final regulations provide several examples to illustrate the application of these rules.

In addition, the final regulations allow an employer, in certain limited circumstances, to begin applying the monthly measurement method to an employee to whom the look-back measurement method has been applied sooner than required under the standard rules governing changes in methods. This rule is intended to address the concern raised by commenters that employers that offer coverage to an employee continuously from within three months of an employee's start date should not be required to continue to treat that employee as a full-time employee for many months after that employee experiences a change in employment status to a position in which the employee will average less than 30 hours of service per week. Examples include a circumstance in which an employee who has been a full-time employee for ten years, and who was offered coverage within three months of the start date, changes from a position of employment to another position requiring fewer hours of service either as part of a phased-retirement program or to care for a family member. The final regulations allow an applicable large employer member to begin to apply the monthly measurement method in lieu of the otherwise applicable stability period beginning on the first day of the fourth full calendar month following the change in employment status. This rule applies only with respect to an employee to whom the applicable large employer member offered MV coverage from at least the first day of the month following the employee's initial three full calendar months of employment through the month in which the change in employment status occurs, and this rule applies only if during each of the three full calendar months following the change in employment status the employee has on average less than 30 hours of service per week. Under this rule, an employer may apply the monthly measurement method to an employee even if the employer does not apply the monthly measurement method to employees in the same category (for example, an employer could apply the monthly measurement method to an hourly employee, even if the employer uses the look-back measurement method to determine full-time employee status of all other hourly employees). The employer may continue to apply the monthly measurement method through the end of the first full measurement period (and any associated administrative period) that would have applied had the employee remained under the applicable look-back measurement method.

The Treasury Department and the IRS anticipate that the rules with respect to a transfer from a position to which one look-back measurement method applies to a position to which another look-back measurement method applies will require complex rules because the methods may differ not only in the length of the applicable measurement and stability periods, but also the starting dates of the measurement periods (for example, the use of a calendar year for one measurement period but a non-calendar year period for another measurement period). To provide for these rules in the most comprehensible format, as well as to ensure flexibility to address situations that arise that have not currently been contemplated, the final regulations provide that with respect to the determination of full-time employee status, the Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)).

## VIII. Affordability and Affordability Safe Harbors

### *A. Affordability Safe Harbors*

Liability under section 4980H only arises if at least one full-time employee of the applicable large employer member receives a premium tax credit. Even if the applicable large employer member offers coverage to 95 percent or more of its full-time employees (and their dependents), thereby avoiding liability under section 4980H(a), the applicable large employer member may be subject to an assessable payment under section 4980H(b) if one or more full-time employees obtain a premium tax credit. See section X of this preamble for a description of rules regarding liability under section 4980H. For an employee who is offered coverage by an employer to be eligible to receive a premium tax credit if the employee enrolls in coverage on an Exchange, the coverage offered to the employee by the employer must either fail to provide MV, or fail to be affordable to that employee, or both. Affordability under section 36B is determined by reference to the taxpayer's household income. Because an employer generally will not know the

taxpayer employee's household income, the proposed regulations under section 4980H set forth three separate safe harbors under which an employer could determine affordability based on information that is readily available to the employer. These three safe harbors are (1) the Form W–2 wages safe harbor, (2) the rate of pay safe harbor, and (3) the federal poverty line safe harbor. If an employer meets the requirements of the safe harbor, the offer of coverage is deemed affordable for purposes of section 4980H(b) regardless of whether it is affordable to the employee under section 36B. Subject to the modifications described in this section, the final regulations adopt these affordability safe harbors.

These safe harbors are all optional. An employer may choose to use one or more of these safe harbors for all of its employees or for any reasonable category of employees, provided it does so on a uniform and consistent basis for all employees in a category. In response to a comment, the final regulations clarify that reasonable categories generally include specified job categories, nature of compensation (for example, salaried or hourly), geographic location, and similar bona fide business criteria. However, an enumeration of employees by name would not be considered a reasonable category.

*B. Form W–2 Wages Safe Harbor*

Under the Form W–2 wages safe harbor, the employer may calculate the affordability of the coverage based solely on the wages paid to the employee by that employer (and any other member of the same applicable large employer that also pays wages to that employee), as reported in Box 1 of the Form(s) W–2 (''Wage and Tax Statement''). Consistent with the proposed regulations, the final regulations provide rules for addressing partial years due to the employee beginning or ending employment in the middle of a calendar year. Commenters requested that reductions in Form W–2 wages due to salary reduction elections under a section 401(k) plan or a cafeteria plan under section 125 be disregarded for purposes of the safe harbor. To be consistent with section 36B, under which an employee's household income (and thus the affordability of an offer of coverage) is determined without adding back those reductions, this suggestion is not adopted in the final regulations under section 4980H.

Commenters also requested that employers be permitted to use the wages from the prior year Form W–2 instead of the current year for purposes of determining affordability. The final regulations do not adopt this comment because it would create a greater disconnect between the premium tax credit and the section 4980H assessable payment. Also, use of prior year wages would not be available with respect to new employees who were not employed by the employer in the prior year. Finally, one commenter requested that employers be permitted to impute full Form W–2 wages during periods of unpaid leave for purposes of applying the safe harbor. The final regulations do not adopt this comment; however, instead of the Form W–2 wages safe harbor, employers can use the rate of pay or federal poverty line safe harbor, both of which use a calculation that is based on an assumed wage amount that is not affected by unpaid leave.

*C. Rate of Pay Safe Harbor*

Under the rate of pay safe harbor in the final regulations, an applicable large employer member's offer of coverage to an hourly employee is treated as affordable for a calendar month if the employee's required contribution for the calendar month for the lowest cost self-only coverage that provides MV does not exceed 9.5 percent of an amount equal to 130 hours multiplied by the lower of the employee's hourly rate of pay as of the first day of the coverage period (generally the first day of the plan year) or the employee's lowest hourly rate of pay during the calendar month. Under the same safe harbor, an applicable large employer member's offer of coverage to a non-hourly employee is treated as affordable for a calendar month if the employee's required contribution for the calendar month for the lowest cost self-only coverage that provides MV does not exceed 9.5 percent of the employee's monthly salary, as of the first day of the coverage period (instead of 130 multiplied by the hourly rate of pay); provided that if the monthly salary is reduced, including due to a reduction in work hours, the safe harbor is not available.

The rate of pay safe harbor provides employers with a design-based method for satisfying affordability without having to analyze each employee's wages and hours. Under this safe harbor, for an hourly employee, the employer uses an assumed rate of 130 hours per calendar month multiplied by an hourly employee's rate of pay, regardless of whether the employee actually works more or less than 130 hours during a calendar month. The affordability calculation under the rate of pay safe harbor is not altered by a leave of absence or reduction in hours worked. Thus, for example, under the rate of pay safe harbor, if an hourly employee treated as a full-time employee earns $10 per hour in a calendar month (and earned at least $10 per hour as of the first day of the coverage period) but has one or more calendar months in which the employee has a significant amount of unpaid leave or otherwise reduced hours, the employer may still require an employee contribution of up to 9.5 percent of $10 multiplied by 130 hours ($123.50).

The final regulations, unlike the proposed regulations, permit an employer to use the rate of pay safe harbor even if an hourly employee's hourly rate of pay is reduced during the year. The proposed regulations provide that the rate of pay safe harbor cannot be used if the employer reduces an employee's hourly rate of pay during the year, because otherwise employers could set an artificially high rate of pay at the beginning of the coverage period resulting in an artificially high required employee contribution, and then the employer could reduce the employee's rate of pay for the remainder of the coverage period. One commenter noted that there are instances in which an employer adjusts an employee's rate of pay depending on, for example, whether minimum sales goals are satisfied. Commenters also noted that the rate of pay may be reduced for bona fide reasons, such as a transfer of position, and requested that the rate of pay safe harbor be available in this circumstance as long as the premium was reduced to reflect the reduction in the rate of pay.

In response to these comments, the final regulations permit an employer to apply the rate of pay safe harbor to an hourly employee even if the employee's rate of pay is reduced during the year. In this situation, the rate of pay is applied separately to each calendar month, rather than to the entire year and the employee's required contribution may be treated as affordable if it is affordable based on the lowest rate of pay for the calendar month multiplied by 130 hours. The final regulations adopt these changes because they result in lower employee required contributions in situations in which an employee's hourly rate of pay is reduced during the year.

Commenters noted that the rate of pay safe harbor cannot be used, as a practical matter, for tipped employees or for employees who are compensated solely on the basis of commissions. While this is correct, employers can use the two other affordability safe harbors, Form W–2 wages and federal poverty line, for determining affordability for

employees whose compensation is not based on a rate of pay.

*D. Federal Poverty Line Safe Harbor*

Under the federal poverty line safe harbor, an applicable large employer member's offer of coverage to an employee is treated as affordable if the employee's required contribution for the calendar month for the lowest cost self-only coverage that provides MV does not exceed 9.5 percent of a monthly amount determined as the federal poverty line for a single individual for the applicable calendar year, divided by 12. This safe harbor is intended to provide employers a predetermined maximum amount of employee contribution that in all cases will result in the coverage being deemed affordable.

The proposed regulations provide that, in the interest of administrative convenience, employers may use the most recently published poverty guidelines as of the first day of the plan year of the applicable large employer member's health plan. One commenter requested that employers be permitted to use the guidelines in effect six months prior to the beginning of the plan year, so as to provide employers with adequate time to establish premium amounts in advance of the plan's open enrollment period. The final regulations adopt this comment.

**IX. Offers of Coverage**

*A. In General*

For an employee to be treated as having been offered coverage for a month (or any day in that month), the coverage offered, if accepted, must be applicable for that month (or that day).

For purposes of section 4980H(a), the proposed and final regulations provide that an applicable large employer member is treated as offering coverage to its full-time employees (and their dependents) for a calendar month if, for that month, it offers coverage to all but five percent or, if greater, five of its full-time employees (provided that an employee is treated as having been offered coverage only if the employer also offered coverage to that employee's dependents as applicable). This relief applies to a failure to offer coverage to the specified number or percentage of employees (and their dependents), regardless of whether the failure to offer was inadvertent. The alternative margin of five full-time employees (and their dependents), if greater than five percent of full-time employees (and their dependents), is designed to accommodate relatively small applicable large employer members because a failure to offer coverage to a few full-time employees (and their dependents) might exceed five percent of the applicable large employer member's full-time employees. Commenters requested that this margin be adjusted based on the size of the employer so that large employers are not allowed to exclude large numbers of employees. This comment is not adopted because use of a uniform percentage reduces complexity and is easier for employers to apply. See section XV.D.7 of this preamble for limited 2015 transition relief under section 4980H(a) for certain employers that offer coverage to at least 70 percent of their full-time employees (and their dependents), and see section XV.D.5 of this preamble for transition relief regarding offers of coverage to dependents.

The final regulations do not apply any specific rules for demonstrating that an offer of coverage was made. The otherwise generally applicable substantiation and recordkeeping requirements in section 6001 apply, including Rev. Proc. 98–25 (1998–1 CB 689). In addition, the offer generally can be made electronically. See § 1.401(a)–21 for a safe harbor method for use of electronic media.

Consistent with the proposed regulations, the final regulations provide that if an employee has not been offered an effective opportunity to accept or decline coverage, the employee will not be treated as having been offered the coverage for purposes of section 4980H. In response to comments, the final regulations provide that an effective opportunity to decline is not required for an offer of coverage that provides MV and is offered either at no cost to the employee or at a cost, for any calendar month, of no more than 9.5 percent of a monthly amount determined as the federal poverty line for a single individual for the applicable calendar year, divided by 12.[9] Thus, an employer may not render an employee ineligible for a premium tax credit by providing an employee with mandatory coverage (that is, coverage which the employee is not offered an effective opportunity to decline) that does not meet MV or that may not be affordable. See the section entitled ''Background'' of the preamble to the proposed regulations regarding minimum value of eligible employer-sponsored plans and other rules regarding the health insurance premium tax credit for a discussion of concerns raised by an arrangement under which employees are required, as a condition of employment or otherwise, to be enrolled in an employer-sponsored plan that does not provide MV or is unaffordable, at 78 FR 25909, 25910 (May 3, 2013).

The final regulations also provide guidance on an offer of coverage for an employee who is employed by more than one applicable large employer member for a calendar month. The final regulations provide that an offer of coverage by one applicable large employer member to an employee for a calendar month is treated as an offer of coverage by all applicable large employer members for that calendar month. Thus, if one applicable large employer member offers coverage to the employee for a calendar month, every other member of the same applicable large employer is considered to have made the same offer of coverage to that employee for purposes of determining the liability under section 4980H, if any, of each applicable large employer member. For example, in the case of a group of applicable large employer members operating a single plan intended to offer coverage to employees of all the applicable large employer members, any employee offered coverage under the plan would be treated as receiving an offer of that coverage from each applicable large employer member. For a discussion of how any assessable payment under section 4980H for a calendar month would be allocated among applicable large employer members if a full-time employee performs services for two or more applicable large employer members during the same calendar month, see section X of this preamble.

Commenters requested that employers not be subject to an assessable payment for failure to offer coverage to full-time employees who have coverage from other sources, such as Medicare, Medicaid or a spouse's employer. The final regulations do not adopt this comment because it is not consistent with section 4980H and would require that the employer verify alternative coverage in a manner not contemplated by the statute (for example, obligating an employer to question its employees as to Medicaid eligibility or a spouse's eligibility for and purchase of employer-sponsored coverage). However, an employee who is eligible for Medicare or Medicaid is not eligible for a

[9] For an employee offered coverage for all 12 calendar months of the year, the total cost for the year will be no more than 9.5 percent of the federal poverty line for a single individual. Thus, regardless of the size of the employee's household or the level of other income or loss of any member of the employee's household, either the employer's coverage will be affordable for purposes of the premium tax credit or the employee's household income will be less than 100 percent of the federal poverty line and the employee will not be eligible for a premium tax credit.

premium tax credit, and in cases in which no full-time employee receives a premium tax credit (for example, because all of an employer's full-time employees are eligible for Medicare or Medicaid), the employer will not be subject to an assessable payment under section 4980H.[10] In addition, for an employer that satisfies the requirements to avoid a payment under section 4980H(a), the employer will not be subject to a payment under section 4980H(b) with respect to those employees (because they are not eligible for a premium tax credit).

The final regulations clarify that an employee's election of coverage from a prior year that continues for every succeeding plan year unless the employee affirmatively elects to opt out of the plan constitutes an offer of coverage for purposes of section 4980H.

Commenters expressed concern about potential liability under section 4980H in the case of an applicable large employer that cannot obtain or maintain coverage for its employees because the employer cannot satisfy a health insurance issuer's minimum participation requirements. In the large group market, a minimum participation requirement cannot be used to deny guaranteed issue. For small employers, such as relatively small applicable large employers, final regulations issued by HHS provide that an issuer must guarantee issue coverage to a small employer during an annual, month-long open enrollment period regardless of whether the small employer satisfies any minimum participation requirement. See 45 CFR 147.104(b)(1). HHS regulations generally define a small employer as one that has at least one, but not more than 100, employees. For plan years beginning before January 1, 2016, states may set the upper limit at 50 employees.

Commenters requested that the final regulations treat an offer of coverage made by the employer during the collective bargaining process between an employer and a union that is not accepted by the union as an offer of coverage to all employees covered by the collective bargaining agreement. However, even where an offer to the union has been made and rejected, the affected employee has never been provided a chance to accept an offer of coverage in these circumstances. Accordingly, the final regulations do not adopt this suggestion.

[10] For rules on when an individual is treated as eligible for Medicare or Medicaid, see § 1.36B–2(c).

*B. Application to Multiemployer and Single Employer Taft-Hartley Plans, Multiple Employer Welfare Arrangements (MEWAs) and Other Similar Arrangements*

Commenters requested clarification of whether an offer of coverage under a multiemployer or single employer Taft-Hartley plan, if the employer contributed to the plan on behalf of the employee, constitutes an offer of coverage by the employer for purposes of section 4980H. The final regulations clarify that for purposes of section 4980H, an offer of coverage includes an offer of coverage made on behalf of an employer, and that this would include an offer made by a multiemployer or single employer Taft-Hartley plan or a MEWA to an employee on behalf of a contributing employer of that employee. See section XV.E of this preamble for interim guidance on the application of section 4980H to multiemployer plans.

Under this same reasoning, if certain conditions are met, an offer of coverage to an employee performing services for an employer that is a client of a professional employer organization or other staffing firm (in the typical case in which the professional employer organization or staffing firm is not the common law employer of the individual) (referred to in this section IX.B of the preamble as a ''staffing firm'') made by the staffing firm on behalf of the client employer under a plan established or maintained by the staffing firm, is treated as an offer of coverage made by the client employer for purposes of section 4980H. For this purpose, an offer of coverage is treated as made on behalf of a client employer only if the fee the client employer would pay to the staffing firm for an employee enrolled in health coverage under the plan is higher than the fee the client employer would pay to the staffing firm for the same employee if the employee did not enroll in health coverage under the plan.

## X. Assessment and Payment of Section 4980H Liability

Under the proposed and final regulations, each applicable large employer member is liable for its section 4980H assessable payment, and is not liable for the section 4980H assessable payment of any other entity in the controlled group comprising the applicable large employer. Any assessable payment under section 4980H is payable upon notice and demand and is assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68 of the Code. The IRS will adopt procedures that ensure employers receive certification, pursuant to regulations issued by HHS, that one or more employees have received a premium tax credit or cost-sharing reduction. 45 CFR 155.310(i). The IRS will contact employers to inform them of their potential liability and provide them an opportunity to respond before any liability is assessed or notice and demand for payment is made. It is anticipated that additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)), will provide that the contact for a given calendar year will not occur until after employees' individual tax returns are due for that year claiming premium tax credits and after the due date for employers that meet the 50 full-time employee (plus FTE) threshold to file the information returns identifying their full-time employees and describing the coverage that was offered (if any).

Commenters requested that employers be permitted to aggregate applicable large employer members within an applicable large employer for purposes of determining section 4980H liability. For example, commenters requested that an applicable large employer member offering coverage to all of its full-time employees be permitted to aggregate with one or more applicable large employer members so that the aggregated group would be treated as having offered coverage to at least 95 percent of its full-time employees (and their dependents) to avoid a payment under section 4980H(a). Due to concerns regarding increased administrative complexity and potential for abuse, the final regulations do not adopt this request.

With respect to a full-time employee who performs services for two or more applicable large employer members during the same calendar month, the final regulations provide that the member for whom the employee has the greatest number of hours of service for that calendar month is the member that treats that employee as a full-time employee for purposes of assessable payment determinations under section 4980H(a) and (b). This rule modifies the rule in the proposed regulations, which provides an allocation rule only for purposes of the section 4980H(b) assessable payment liability and which allocated the payment amount among the different members in accordance with the number of hours of service the employee had from each such member for that calendar month. For any calendar month in which the employee has the same number of hours of service for two or more applicable large

employer members, the final regulations provide that the members can treat one of the members for which the employee performs services as the employer of that employee for that calendar month for purposes of the assessable payment determination. The Treasury Department and the IRS anticipate that the member who is treated as the employer of that employee would report that employee as its full-time employee on the member's section 6056 information return, and if the employee is not included in any applicable large employer member's section 6056 information return, the IRS will select a member to be treated as the employer of that employee for purposes of the assessable payment determination.

In complying with section 4980H, applicable large employer members are responsible for ensuring that they comply with the recordkeeping requirements in section 6001, including Rev. Proc. 98–25 (1998–1 CB 689) (see § 601.601(d)(2)(ii)(b)).

Pursuant to section 275(a)(6) regarding the nondeductibility of certain excise taxes, including those under chapter 43, an assessable payment imposed under section 4980H is not deductible.

## XI. Definition of Dependent

### *A. In General*

Section 4980H provides that in order to avoid a potential assessable payment under section 4980H, an applicable large employer must offer coverage to its full-time employees and the full-time employees' dependents. For this purpose, the proposed regulations define the term *dependent* to mean a child (as defined in section 152(f)(1)) of an employee who has not attained age 26. For this purpose, a dependent does not include the spouse of an employee. This definition of dependent applies only for purposes of section 4980H. See section XV.D.5 of this preamble for transition relief regarding offers of coverage to dependents.

Commenters requested that the definition of dependent be expanded to include grandchildren and qualifying relatives (within the meaning of section 152). The final regulations do not expand the definition of dependent to include these categories because such a definition would be inconsistent with the typical coverage provided by employer-sponsored plans.

Some commenters requested that the definition of dependent be expanded to include spouses, and other commenters supported the proposal to exclude spouses from the definition of dependent. The definition of dependent in the final regulations, consistent with the definition in the proposed regulations, excludes spouses.

### *B. Foster Children and Stepchildren*

By incorporating section 152(f)(1), the definition of dependent in the proposed regulations includes biological children, stepchildren, adopted children, and foster children. Commenters requested that foster children and stepchildren be removed from the definition of dependent for purposes of section 4980H. With respect to foster children, commenters noted that the government entities responsible for a foster system typically provide health benefits for the foster child, so that employer-provided coverage would be duplicative and difficult to administer. With respect to stepchildren, commenters noted that in the case of a stepchild, the child in most cases will have two parents who are not stepparents both of whom potentially would be able to provide for the child's coverage and both of whose employers potentially could be subject to section 4980H for failing to offer coverage to that child. These commenters suggested that applying section 4980H to an employee's stepchildren would in many cases be duplicative and that, for this reason, many employers currently do not extend offers of coverage to stepchildren of an employee. In light of these considerations, the final regulations exclude both foster children and stepchildren from the definition of dependent for purposes of section 4980H only.

### *C. Treatment During Month in Which Dependent Attains Age 26*

A commenter requested clarification of the application of section 4980H to an employee's child for the month in which the child attains age 26. In response, the final regulations clarify that for purposes of section 4980H, a child is a dependent for the entire calendar month during which he or she attains age 26.

### *D. Citizens or Nationals of Other Countries*

The definition of dependent under the proposed regulations includes children who are not citizens or residents of the United States. Section 152(b)(3), which is not incorporated in the definition of dependent under the proposed regulations, provides that the term *dependent* does not include an individual who is not a citizen or national of the United States unless such individual is a resident of the United States or a country contiguous to the United States (certain adopted children are excepted from this rule). Based on a commenter's concerns about offering coverage to the children of an employee who works for an applicable large employer in the United States but whose children are not U.S. citizens and who do not reside in the United States, the final regulations modify the definition of dependent to incorporate the rules under section 152(b)(3). Accordingly, the final regulations exclude a child who is not a U.S. citizen or national from the definition of dependent, unless that child is a resident of a country contiguous to the United States or is within the exception for adopted children described in section 152(b)(3)(B).

## XII. Worker Classification and Section 4980H

Consistent with the proposed regulations, these final regulations define an employee for purposes of section 4980H as an individual who is an employee under the common law standard, and as not including a leased employee (as defined in section 414(n)(2)), a sole proprietor, a partner in a partnership, a 2-percent S corporation shareholder, or a worker described in section 3508 (this last category is added to the list of exclusions in the final regulations). Commenters expressed concerns about the consequences under section 4980H of an IRS examination in which workers providing services to a service recipient entity are reclassified as employees of that entity. Specifically, commenters pointed out that if a worker who was not treated as an employee by the service recipient and was not offered health coverage by the service recipient is reclassified as an employee of the service recipient for past periods, and that worker had sufficient hours of service to be a full-time employee for such past periods, the reclassification may impact whether the service recipient employer had offered coverage to no less than 95 percent of its full-time employees for a particular calendar month (and therefore whether an assessable amount was payable under section 4980H(a)). In addition, one commenter noted that, even if the reclassification did not result in liability for an assessable payment under section 4980H(a), the service recipient could still be liable for an assessable payment under section 4980H(b) if the reclassified full-time employee had received a premium tax credit.

Commenters discussed the applicability of section 530 of the Revenue Act of 1978 (referred to in this preamble as ''Section 530'') for purposes of section 4980H. Section 530, which is not incorporated into the Code, provides that ''if (A) for purposes of employment

taxes, the taxpayer did not treat an individual as an employee for any period, and (B) in the case of periods after December 31, 1978, all Federal tax returns (including information returns) required to be filed by the taxpayer with respect to such individual for such period are filed on a basis consistent with the taxpayer's treatment of such individual as not being an employee, then, for purposes of applying such taxes for such period with respect to the taxpayer, the individual shall be deemed not to be an employee unless the taxpayer had no reasonable basis for not treating such individual as an employee.'' However, the relief under Section 530 applies solely for purposes of the employment tax provisions of the Code, and therefore does not apply to potential liabilities under section 4980H.

In response to the limitation on the relief under Section 530, commenters requested that the Treasury Department and the IRS formulate a similar provision in these final regulations applicable to potential liabilities under section 4980H. The Treasury Department and the IRS are concerned that the relief requested would serve to increase the potential for worker misclassification by significantly increasing the benefit of having an employee treated as an independent contractor. Accordingly, the final regulations do not adopt this suggestion.

## XIII. Particular Positions of Employment

### *A. Home Care Workers*

Commenters on behalf of the home care industry, as well as other industries, stated that the additional expense of providing coverage or paying the assessable payment under section 4980H could cause an employer financial difficulties. The Treasury Department and the IRS understand that in certain instances the additional expense may be a burden for an employer; however, section 4980H applies to all applicable large employers and does not provide an exception, either for employers in a particular industry such as the home care industry, or for employers with more difficulty adjusting revenue streams. Accordingly, the final regulations do not provide for these types of exceptions.

Section 4980H applies, however, only with respect to an applicable large employer, and in some circumstances the service recipient rather than a home care agency may be the common law employer of the health care provider. For example, if the service recipient has the right to direct and control the home care provider as to how they perform the services, including the ability to choose the home care provider, select the services to be performed, and set the hours of the home care provider, these facts would indicate that the service recipient is the employer under the common law standard. In that case, the agency that placed the home care provider would not be subject to section 4980H with respect to that particular provider, and the service recipient employer generally would not be subject to section 4980H with respect to any employee because the service recipient is unlikely to employ 50 full-time employees (including FTEs).

### *B. Section 3508 Employees*

Commenters requested clarification on whether the categories of workers identified in section 3508 (that is, real estate agents and direct sellers) are treated as employees for purposes of section 4980H. Because section 3508 provides that the identified categories of workers are not treated as employees for any purpose of the Code, the final regulations clarify that workers identified in section 3508 do not constitute employees for purposes of section 4980H (and, therefore, do not constitute full-time employees for any purpose, and their hours of service are not taken into account in determining the number of an employer's FTEs).

## XIV. International Issues

### *A. Foreign States and International Organizations*

One commenter requested that the Treasury Department and the IRS consider the effect of U.S. laws and treaty obligations on the applicability of section 4980H to certain operations of foreign states and certain international organizations in the United States. Due to these applicable U.S. laws and treaty obligations, certain operations of foreign states and certain international organizations would not be subject to assessable payments under section 4980H. Accordingly, the final regulations do not explicitly address this matter. See section 894(a)(1).

### *B. Employees Holding H–2A and H–2B Visas*

Commenters, generally representing employers in the agricultural industry, requested that holders of H–2A and H–2B visas be exempted from the definition of employee for purposes of section 4980H. The commenters suggested that such employees are generally seasonal workers, but that the exemption for certain seasonal workers for purposes of the definition of an applicable large employer, which excludes only those seasonal workers employed for a period of no more than 120 days, does not adequately address these workers because many of these individuals work more than 120 days due to serial growing seasons. However, the statutory provisions related to seasonal workers are explicit that seasonal workers are employees and that seasonal workers may be disregarded for purposes of the determination of whether an employer is an applicable large employer only if the seasonal workers cause the employer to exceed 50 full-time employees for a period of no more than 120 days. Furthermore, no justification was provided for exempting holders of H–2B visas, which cover non-agricultural workers. For these reasons, the final regulations do not adopt the suggestion that holders of H–2A and H–2B visas be generally exempted from the definition of employee for purposes of section 4980H.

The final regulations also do not adopt a special rule with respect to these workers' status as seasonal employees. The definition of seasonal employee is different from the definition of seasonal worker, and is relevant to the determination of a worker's status as a full-time employee for reasons other than the entity's determination of status as an applicable large employer. In applying the definition of seasonal employee, whether the employee holds any particular visa is not relevant. See section VII.C.8 of this preamble for a discussion of the definition of a seasonal employee.

### *C. Employees Performing Services on Cruise Ships*

Representatives of the cruise ship industry requested that services performed on a cruise ship be treated as services performed outside the United States, meaning that those services would not count as hours of service for purposes of identifying an employer as an applicable large employer, or an employee as a full-time employee. However, that treatment would be inconsistent with the longstanding rules in section 863(c) that apply to transportation income derived from personal services and treat some such income as income from sources within the United States. Under the general rules for determining hours of service under both the proposed and the final regulations, hours of service do not include hours for which an employee receives compensation that is taxed as income from sources outside the United States. The final regulations clarify that

this rule applies to transportation employees such as employees of cruise ships by specifically stating that hours of service do not include hours of service to the extent the compensation for such hours of service constitutes income from sources without the United States as determined under section 863.

The commenter also requested that cruise ship employers not be subject to section 4980H if they comply with the requirements of the Maritime Labor Convention of 2006 and provide employees certain coverage while they are on board the vessel. Regardless of whether that coverage constitutes MEC under section 5000A, if an offer of coverage is not extended to an employee's dependent children, it would fail to meet the requirements of an offer under section 4980H (but note that, as described in section XI.D of this preamble, the final regulations exclude a child who is not a U.S. citizen or national from the definition of dependent, unless that child is a resident of a country contiguous to the United States or is within the exception for adopted children described in section 152(b)(3)(B)). The final regulations do not adopt this suggestion.

*D. Modifications to the Definition of Hours of Service*

Consistent with the proposed regulations, the final regulations exclude from the definition of hours of service those hours the compensation for which constitutes income from sources without the United States (within the meaning of sections 861 through 863 and the regulations thereunder). For this purpose, the term *United States* means United States as defined in section 7701(a)(9), which includes only the States and the District of Columbia and does not include the U.S. territories. In response to comments, the heading to this provision (§ 54.4980H–1(a)(24)(ii)(C)) removes the reference to nonresident alien individuals, because the application of the provision does not depend upon the residency or citizenship status of the employee. In addition, the reference to section 862(a)(3) in the proposed regulations has been expanded to reference sections 861 through 863, and the regulations thereunder, to incorporate all of the special rules applicable to the identification of the source of compensation income.

*E. Employees Transferring From a Domestic Applicable Large Employer Member to a Foreign Applicable Large Employer Member (or Vice Versa)*

One commenter asked whether an employee transferred from a foreign entity to a U.S. entity in cases in which the two entities are treated as a single employer could be treated as a new hire (and whether an employee transferred from a U.S. entity to a foreign entity in the same organization could be treated as a terminated employee). The commenter pointed out that treatment of the employee as a continuing employee in such circumstances may result in certain anomalies, especially in the case of an employer using the look-back measurement method. For example, if a full-time employee who transferred from a domestic corporation to a foreign corporation were treated as a continuing employee, the commenter asked whether this means that the stability period must continue so that the employee must be offered coverage while employed at the foreign corporation to avoid any potential liability under section 4980H. In contrast, an employee performing services at a foreign corporation generally will have no hours of service if compensation for those services is not treated as U.S. source income, so if transferred to a domestic corporation and treated as a continuing employee such an employee would not have any hours of service before the U.S. transfer as part of the measurement period utilized by the domestic corporation.

To avoid these anomalies, the final regulations provide that, for both the look-back measurement method and the monthly measurement method, an employee who transfers employment from a domestic applicable large employer member to a foreign applicable large employer member may be treated as having terminated employment, but only if the position is anticipated to continue indefinitely or for at least 12 months and if substantially all of the compensation received following the transfer is treated as foreign-source income.

With respect to an employee who transfers from a foreign applicable large employer member at which the employee's services had not resulted in hours of service to a domestic applicable large employer member, if the employee had no prior hours of service with the applicable large employer (because, for example, the employee had only received non-U.S. source income in connection with services performed for the foreign applicable large employer member), the employee is treated as a newly hired employee by the domestic applicable large employer member. If the same transfer occurs with respect to an employee who had prior hours of service with the applicable large employer, the period at the foreign applicable large employer member may be treated as a period for which no hours of service are earned under the rehire rules (if the employee did not receive U.S. source income with respect to that period), so that if that period is at least 13 weeks in length, the employee is treated as a newly hired employee of the domestic applicable large employer member. See section VII.E of this preamble for a description of the rehire rules.

## XV. Transition Relief and Interim Guidance

*A. Transition Guidance in the Preamble to the Proposed Regulations*

The preamble to the proposed regulations includes transition guidance addressing (1) the application of section 4980H to applicable large employers with non-calendar year plans,[11] (2) salary reduction elections for accident and health plans provided through cafeteria plans with non-calendar year plan years beginning in 2013, (3) for purposes of determining full-time employee status, measurement periods for stability periods starting in 2014, (4) the application of section 4980H to applicable large employer members participating in multiemployer plans, (5) the determination of applicable large employer status for 2014, (6) the application of section 4980H to an offer of coverage to a full-time employee's dependents, and (7) for purposes of determining full-time employee status, the variable hour employee definition. See 78 FR 218, 236–239. The transition guidance for applicable large employer members participating in multiemployer plans was clarified in the correction to the proposed regulations. See 78 FR 16445, 16445–16446. The transition guidance in the preamble to the proposed regulations, as corrected, generally applies for 2014 or for the plan year beginning in 2014 (but additional broader transition relief was provided after the issuance of the proposed regulations; see discussion in section XV.B of this preamble.)

*B. Transition Guidance for 2014—Notice 2013–45*

Section 1513(d) of the Affordable Care Act provides that section 4980H applies to months after December 31, 2013; however, Notice 2013–45, issued on July 9, 2013, provides as transition relief that no assessable payments under section 4980H will apply for 2014.

[11] The preamble to the proposed regulations refers to plans with plan years other than the calendar year as fiscal year plans. To avoid confusion, this preamble refers to these plans as non-calendar year plans.

(Transition relief was also provided for the section 6056 information reporting requirements for applicable large employers and the section 6055 information reporting requirements for issuers of MEC.) Notice 2013–45 provides that the employer shared responsibility provisions under section 4980H (and the information reporting provisions) will become effective for 2015.[12]

*C. Section 125 Non-Calendar Year Guidance*

The preamble to the proposed regulations provides transition relief that allows flexibility for individuals to make changes in salary reduction elections for accident and health plans provided through section 125 cafeteria plans for non-calendar cafeteria plan years beginning in 2013. The scope of this transition relief was clarified in section VI of Notice 2013–71, issued on October 31, 2013. Generally, the rules allowing employees to change their employer health plan elections under a section 125 cafeteria plan do not allow midyear changes, see § 1.125–4. Temporary relief was needed because generally the section 5000A requirement to maintain coverage is first effective on January 1, 2014, and enrollment in qualified health plans on an Exchange is first available for 2014. The relief allowed employers to amend their plans to permit employees who had not enrolled in an employer's plan with a non-calendar plan year that began in 2013 to enroll in the middle of the plan year in order for the employees to maintain coverage for 2014 or if the employees wished to enroll in an Exchange plan, to drop enrollment in the employer's plan with a non-calendar plan year that began in 2013 in the middle of the plan year. Both the implementation of section 5000A and the initial availability of the qualified health plans on an Exchange were one-time events at the beginning of 2014 only affecting employee decisions during 2013 non-calendar plan years. Consequently, these rules are not extended for non-calendar cafeteria plan years beginning in 2014.

*D. Transition Guidance for 2015*

1. Non-Calendar Year Plans

Section IX.A of the preamble to the proposed regulations provides transition guidance for the period prior to the first day of the plan year beginning in 2014 for employers sponsoring non-calendar year plans. 78 FR 218, 236.

The following three pieces of transition guidance apply for the period before the first day of the first non-calendar year plan year beginning in 2015 (the 2015 plan year) for employers that maintained non-calendar year plans as of December 27, 2012, if the plan year was not modified after December 27, 2012, to begin at a later calendar date. The first two pieces (pre-2015 eligibility transition guidance and significant percentage transition guidance (all employees)) are extensions of the rules provided in section IX.A of the preamble to the proposed regulations. A new option (significant percentage transition guidance (full-time employees)) is added in this preamble.

In essence, this guidance provides transition relief for the period before the first day of the 2015 plan year with respect to all employees who, under the eligibility terms of the plan as in effect on February 9, 2014, are eligible as of the first day of the 2015 plan year for coverage under a non-calendar year plan, and who are offered, no later than the first day of the 2015 plan year, affordable coverage that provides MV. Also, in general, unless the employees described in the preceding sentence comprise an insufficient percentage of all the employer's employees, this guidance also provides relief with respect to all other employees of the employer who are offered affordable coverage that provides MV as of the first day of the 2015 plan year. This exception reflects that the need for transition relief enabling employers to begin offering coverage to employees who are not currently offered coverage at the beginning of a non-calendar year plan year, in order to coincide with the program for employees currently offered coverage, is not as compelling if the number of existing employees eligible for coverage under a non-calendar year plan is a relatively small portion of the employer's total work force.

a. Pre-2015 Eligibility Transition Guidance

If an applicable large employer member maintained a non-calendar year plan as of December 27, 2012, and the plan year was not modified after December 27, 2012 to begin at a later calendar date, this rule applies with respect to employees of the applicable large employer member (whenever hired) who would be eligible for coverage effective beginning on the first day of the 2015 plan year under the eligibility terms of the plan as in effect on February 9, 2014. If an employee described in the preceding sentence is offered affordable coverage that provides MV no later than the first day of the 2015 plan year, no section 4980H assessable payment will be due with respect to that employee for the period prior to the first day of the 2015 plan year. To provide relief with respect to employees who are not offered coverage during one or more calendar months in 2015 solely because they terminate employment before the beginning of the 2015 plan year, this relief also applies with respect to an employee who would be eligible for coverage effective beginning on the first day of the 2015 plan year under the eligibility terms of the plan as in effect on February 9, 2014, but for the fact that the employee terminated employment (and was not rehired) prior to the first day of the 2015 plan year. This relief only applies with respect to employees who would not have been eligible for coverage under any group health plan maintained by an applicable large employer member as of February 9, 2014, that has a calendar year plan year.

Notwithstanding the foregoing, an applicable large employer member may be subject to an assessable payment under section 4980H(a) if it does not offer coverage to all but five percent (or, if greater, five) of its full-time employees (and their dependents) (or, if the transition relief set forth in section XV.D.7 of this preamble applies, if it does not offer coverage to all but 30 percent of its full-time employees (and their dependents)) as of the first day of the 2015 plan year. If an applicable large employer member does not do so, an assessable payment under section 4980H(a) may be due for any calendar month in 2015 under the section 4980H(a) rules as applied without regard to the relief set forth in this section XV.D.1.a of the preamble. See section XV.D.5 of this preamble for transition relief regarding offers of coverage to dependents.

As an illustration of the application of this rule, assume Employer Z has 600 employees, all of whom are full-time employees within the meaning of the final regulations, and Employer Z maintained a plan with an April 1 plan year as of December 27, 2012 (Plan P). Plan P's plan year was not modified after December 27, 2012, and all of Employer Z's employees are eligible for coverage under Plan P under the eligibility terms as in effect on February

[12] Also, the preamble to the proposed regulations on MV of eligible employer-sponsored plans and other rules regarding the health insurance premium tax credit provide transition guidance under section 4980H for determining affordability and MV as related to wellness programs for plan years of an employer's group health plan beginning before January 1, 2015. See 78 FR 25909, 25911–25912 (May 3, 2013).

9, 2014, however coverage offered prior to the 2015 plan year is not affordable. All of Employer Z's employees are offered affordable coverage that provides MV effective no later than April 1, 2015. In this case, no section 4980H assessable payment will be due with respect to any employee of Employer Z for the period before April 1, 2015. The same transition relief would apply to those 600 employees even if Employer Z also had a calendar year plan (Plan Q) and had a total of 1,000 full-time employees, 600 of whom were described above (and were not eligible for coverage under Plan Q) and 400 of whom were eligible for coverage under Plan Q as of January 1, 2015. However, the same transition relief would not apply to those 600 employees if as of April 1, 2015, the 400 other employees were not offered coverage (because as of that date Employer Z would not have offered coverage to all but five percent (or, if greater, five) of its full-time employees (and their dependents)) (and if the transition relief set forth in section XV.D.7 of this preamble applied, as of that date Employer Z would not have offered coverage to all but 30 percent of its full-time employees (and their dependents)).

b. Significant Percentage Transition Guidance (All Employees)

Additional transition guidance is also provided for employers that maintained a non-calendar year plan as of December 27, 2012 (or that maintained two or more non-calendar year plans that have the same plan year as of December 27, 2012), if the plan year of the non-calendar year plan was not modified to begin after December 27, 2012, at a later calendar date after December 27, 2012, and that either—(1) had, as of any date in the 12 months ending on February 9, 2014, at least one quarter of its employees covered under those non-calendar year plans, or (2) offered coverage under those plans to one third or more of its employees during the open enrollment period that ended most recently before February 9, 2014. Under the additional transition guidance in this section, no assessable payment under section 4980H will be due for any month prior to the first day of the 2015 plan year with respect to employees who (1) are offered affordable coverage that provides MV no later than the first day of the 2015 plan year, and (2) would not have been eligible for coverage under any group health plan maintained by the applicable large employer member as of February 9, 2014, that has a calendar year plan year. Notwithstanding the foregoing, if an applicable large employer member does not offer coverage to all but five percent (or, if greater, five) of its full-time employees (and their dependents) (or, if the transition relief set forth in section XV.D.7 of this preamble applies, if it does not offer coverage to all but 30 percent of its full-time employees (and their dependents)) as of the first day of the 2015 plan year, an assessable payment under section 4980H(a) may be due for any calendar month in 2015 under the section 4980H(a) rules as applied without regard to the relief set forth in this section XV.D.1.b of the preamble. See section XV.D.5 of this preamble for transition relief regarding offers of coverage to dependents.

For example, assume Employer Y has 1,100 employees. One thousand of Employer Y's employees are full-time employees and 100 of Employer Y's employees are not full-time employees. Employer Y maintained a plan with a July 1 plan year (Plan M) as of December 27, 2012. Plan M's plan year was not modified after December 27, 2012, to begin at a later calendar date. Employer Y does not offer any coverage other than Plan M.

For purposes of applying the significant percentage transition guidance (all employees), Employer Y chooses December 1, 2013, as the date in the 12 months ending on February 9, 2014, to measure the number of employees it covered under Plan M. On December 1, 2013, Plan M covered 23 percent of Employer Y's employees (253 out of 1,100). During the open enrollment period that ended most recently before February 9, 2014, Employer Y offered coverage under Plan M to 45 percent of its employees (495 out of 1,100). As of the first day of the 2015 plan year (July 1, 2015), Employer Y offers affordable coverage that provides MV under Plan M to all full-time employees. Employer Y does not offer coverage to employees who are not full-time employees.

Under the significant percentage transition guidance (all employees), no section 4980H assessable payment will be due with respect to any of the full-time employees of Employer Y for the period before July 1, 2015, because Employer Y offered coverage to 45 percent (which exceeds one third) of its employees during the open enrollment period that ended most recently before February 9, 2014, and the full-time employees of Employer Y are offered affordable coverage that provides MV no later than the first day of the 2015 plan year (July 1, 2015).

Relief is not provided under the significant percentage transition guidance (all employees) with respect to the 100 employees who are not full-time employees and to whom coverage is not offered as of July 1, 2015, but no relief is necessary for these employees because an employer is not liable for an assessable payment under section 4980H for failure to offer coverage to an employee who is not a full-time employee; however, nothing in section 4980H precludes an employer from providing coverage to employees who are not full-time employees.

c. Significant Percentage Transition Guidance (Full-Time Employees)

Commenters noted that because the significant percentage transition guidance (all employees), as set forth in section IX.A of the preamble to the proposed regulations and generally extended in section XV.D.1.b of this preamble, applies based on the total number of employees, including seasonal and part-time employees, employers with large numbers of seasonal or part-time employees might not be able to meet the requirements of the significant percentage transition guidance (all employees), regardless of the percentage of full-time employees eligible for or enrolled in health care coverage. Commenters requested that the significant percentage transition guidance (all employees) take into account only full-time employees (within the meaning of section 4980H).

Additional transition guidance is provided for employers that, as of December 27, 2012, maintained a non-calendar year plan (or two or more such plans that, as of that date, have the same plan year) if the plan year was not modified to begin after that date to begin at a later calendar date, and if the employer either—(1) had, as of any date in the 12 months ending on February 9, 2014, at least one third of its full-time employees covered under those non-calendar year plans, or (2) offered coverage under those plans to one half or more of its full-time employees during the open enrollment period that ended most recently before February 9, 2014. Under the additional transition guidance in this section XV.D.1.c of the preamble, no payment under section 4980H will be due for any month prior to the first day of the 2015 plan year with respect to full-time employees who (1) are offered affordable coverage that provides MV no later than the first day of the 2015 plan year, and (2) would not have been eligible for coverage under any group health plan maintained by the applicable large employer member as of February 9, 2014, that has a calendar year plan year. Notwithstanding the foregoing, if an applicable large employer member does not offer coverage to all but five percent

(or, if greater, five) of its full-time employees (and their dependents) (or, if the transition relief set forth in section XV.D.7 of this preamble applies, if it does not offer coverage to all but 30 percent of its full-time employees (and their dependents)) as of the first day of the 2015 plan year, an assessable payment under section 4980H(a) may be due for any calendar month in 2015 under the section 4980H(a) rules as applied without regard to the relief set forth in this section XV.D.1.c of the preamble. See section XV.D.5 of this preamble for transition relief regarding offers of coverage to dependents.

For example, assume Employer W has 2,000 employees, of whom 500 are full-time employees and 1,500 are not full-time employees. Employer W maintained a plan with a July 1 plan year (Plan N) as of December 27, 2012. Plan N's plan year was not modified after December 27, 2012. Employer W does not offer any coverage other than Plan N.

For purposes of applying the significant percentage transition guidance (full-time employees), Employer W chooses December 1, 2013, as the date in the 12 months ending on February 9, 2014, to count the number of full-time employees it covered under Plan N. On December 1, 2013, Plan N covered 20 percent of Employer W's full-time employees (100 of 500).

During the open enrollment period that ended most recently before February 9, 2014, Employer W offered coverage under Plan N to 60 percent of its full-time employees (that is, 300 of 500). As of the first day of the 2015 plan year (July 1, 2015), Employer W offers affordable coverage that provides MV under Plan N to all full-time employees. Employer W does not offer coverage to employees who are not full-time employees.

Under the significant percentage transition guidance (full-time employees), no section 4980H assessable payment will be due with respect to Employer W's full-time employees for the period before July 1, 2015, because Employer W offered coverage to at least one half of its full-time employees during the open enrollment period that ended most recently before February 9, 2014, and the full-time employees of Employer W are offered affordable coverage that provides MV no later than the first day of the 2015 plan year (July 1, 2015).

Relief is not provided under the significant percentage transition guidance (full-time employees) with respect to Employer W's employees that are not full-time employees, but no relief is necessary for these employees because an employer is not liable for an assessable payment under section 4980H for failure to offer coverage to an employee who is not a full-time employee; however, nothing in section 4980H precludes an employer from providing coverage to employees who are not full-time employees.

d. Requirement of No Change to Plan Year

The transition guidance for applicable large employer members sponsoring non-calendar year plans set forth in section XV.D.1 of this preamble are available for a non-calendar year plan only if that plan's plan year was not modified after December 27, 2012, to begin at a later calendar date. For example, if, as of December 27, 2012, an applicable large employer member sponsored a non-calendar year plan with a plan year starting on July 1 and later changed the start of the plan year to December 1, the transition guidance for applicable large employer members sponsoring non-calendar year plans set forth in section XV.D.1 of this preamble would not apply.

e. Section 6056 Reporting for 2015 Transition Period for Non-Calendar Year Plans

Employers eligible for the transition guidance for plans with non-calendar year plan years remain subject to the reporting requirements under section 6056 for the entire 2015 calendar year. Because no section 4980H liability applies whether or not a full-time employee is offered coverage during the portion of the 2014 plan year falling in 2015, the applicable large employer may determine the full-time employees for that period for purposes of the section 6056 reporting requirements after the period has ended, using actual service data or using the look-back measurement method, and use those determinations for the reporting required for the period during 2015 that precedes the start of the 2015 plan year. In addition, the employer should be able to determine whether the coverage offered provides MV and the employee portion of the applicable premium in time to complete the required reporting for 2015 (that is, for section 6056 returns furnished to employees and filed with the IRS in 2016). Because this reporting is needed by the employee and the IRS for the administration of the premium tax credit, applicable large employers are required to report this information for the entire 2015 calendar year, even if during some calendar months in 2015 section 4980H liability will not apply by reason of the transition guidance for non-calendar year plan years. The section 6056 return instructions will provide additional information on how to report for 2015.

2. Shorter Measurement Periods Permitted for Stability Period Starting During 2015

For purposes of section 4980H, the term *full-time employee* means, with respect to any month, an employee who is employed on average at least 30 hours of service per week with an employer. Section 4980H(c)(4)(A). Like the proposed regulations, the final regulations include an optional alternative method to determine full-time employee status (for purposes other than determining applicable large employer status) referred to as the look-back measurement method. See section VII.C of this preamble for a description of the look-back measurement method.

As an extension of guidance provided in section IX.C of the preamble to the proposed regulations, for purposes of stability periods beginning in 2015,[13] employers may adopt a transition measurement period that is shorter than 12 consecutive months but that is no less than 6 consecutive months and that begins no later than July 1, 2014, and ends no earlier than 90 days before the first day of the plan year beginning on or after January 1, 2015 (90 days being the maximum permissible administrative period). For example, an employer with a calendar year plan may use a measurement period from April 15, 2014, through October 14, 2014 (six months), followed by an administrative period ending on December 31, 2014.

As a further example, an employer with a plan year beginning April 1 that also elected to implement a 90-day administrative period may use a measurement period from July 1, 2014, through December 31, 2014 (six months), followed by an administrative period ending on March 31, 2015. However, an employer with a plan year beginning on July 1 must use a measurement period that is longer than 6 months to comply with the requirement that the measurement period begin no later than July 1, 2014, and end no earlier than 90 days before the stability period. For example, the employer may have a 10-month measurement period from June 15, 2014, through April 14, 2015, followed by an administrative period from April 15, 2015, through June 30, 2015.

This transition guidance applies to a stability period beginning in 2015

[13] An employer may continue to rely on the transition relief in section IX.C of the preamble to the proposed regulations if the employer applies that transition relief to a stability period that begins in 2014 and ends in 2015.

through the end of that stability period (including any portion of the stability period falling in 2016), and applies to individuals who are employees as of the first day of the transition measurement period. For employees hired during or after the transition measurement period described in this section XV.D.2 of the preamble, the general rules for new employees under the look-back measurement method set forth in § 54.4980H–3(d) apply.

3. Shorter Period Permitted for Determining Applicable Large Employer Status for 2015

An applicable large employer is, with respect to a calendar year, an employer that employed an average of at least 50 full-time employees (including FTEs) on business days during the preceding calendar year. See section 4980H(c)(2); § 54.4980H–2.

Similar to the transition guidance provided in section IX.E of the preamble to the proposed regulations, for the 2015 calendar year, an employer may determine its status as an applicable large employer by reference to a period of at least six consecutive calendar months, as chosen by the employer, during the 2014 calendar year (rather than the entire 2014 calendar year). Thus, an employer may determine whether it is an applicable large employer for 2015 by determining whether it employed an average of at least 50 full-time employees (including FTEs) on business days during any consecutive six-month period in 2014. Whether an employer meets the requirements of the seasonal worker exception, as described in section V.C of this preamble, for purposes of determining applicable large employer status for 2015 is based on the calendar year, rather than on the calendar months chosen by the employer under the 2015 applicable large employer transition guidance, if applicable. See section V of this preamble for a discussion of the determination of status as an applicable large employer.

This guidance allows employers to choose to use either a period to prepare to count their employees or a period afterward to ascertain and implement the results of the determination, or both. For example, an employer could use at least six months through August 2014 to determine its applicable large employer status and, if it is an applicable large employer, the period from September through December 2014 to make any needed adjustments to its plan (or to establish a plan).

Commenters noted that, under the transition guidance for applicable large employer status in 2014, the hours of service (or lack of hours of service) during the summer season could be taken into account by schools in determining applicable large employer status even though, during the summer, employees may provide no formal, in-school service. These commenters expressed concern that this would affect the educational employer's total number of full-time employees and status as an applicable large employer by overweighting the summer period in relation to the non-summer academic year. The Treasury Department and the IRS understand this concern and have considered various options for addressing these comments in developing this transition guidance, but have concluded that the options for addressing this concern (such as basing the rule on non-consecutive months or applying an employee-by-employee rule such as the employment break period rule set forth in § 54.4980H–3(d)(6)(ii)(B)) would add more complexity and administrative burden than is justified for a rule that applies only for 2015.

Also note that in addition to this transition rule, as described in section V.F of this preamble, the final regulations provide with respect to an employee who was not offered coverage at any point in the prior calendar year, if an employer that is an applicable large employer for the first time offers the employee coverage at or before April 1 of the first year in which the employer is an applicable large employer, the employer will not be subject to an assessable payment under section 4980H by reason of its failure to offer coverage to the employee for January through March of that year, provided that in order to avoid an assessable payment under section 4980H(b), the coverage offered on or before April 1 provides MV.

In addition, section XV.D.6 of this preamble provides 2015 transition relief for certain applicable large employers with fewer than 100 full-time employees (including FTEs). The rule described in this section XV.D.3 of the preamble may be used by an applicable large employer to determine its number of full-time employees (including FTEs) for purposes of the transition rule set forth in section XV.D.6 of this preamble.

4. Offer of Coverage for January 2015

The final regulations provide, in general, that if an applicable large employer member fails to offer coverage to a full-time employee for any day of a calendar month, that employee is treated as not offered coverage during that entire month. See § 54.4980H–4(c).

The Treasury Department and the IRS understand that many employers offer coverage for a new year effective as of the first day of the first pay period beginning on or after the first day of the year, and that questions have arisen as to whether a full-time employee will be treated as having been offered coverage for the first month to which section 4980H applies if the offer of coverage applies no later than the first day of the first payroll period that begins in that month.

Solely for purposes of January 2015, if an applicable large employer member offers coverage to a full-time employee no later than the first day of the first payroll period that begins in January 2015, the employee will be treated as having been offered coverage for January 2015. This transition guidance, which was not contained in the preamble to the proposed regulations, applies only for January 2015.

5. Coverage for Dependents

In order to avoid a potential assessable payment under section 4980H, an applicable large employer member must offer coverage to its full-time employees and the full-time employees' dependents. To provide employers sufficient time to expand their health plans to add dependent coverage, section IX.F of the preamble to the proposed regulations provides that any employer that takes steps during its plan year that begins in 2014 (2014 plan year) toward satisfying the section 4980H provisions relating to offering coverage to full-time employees' dependents will not be liable for any assessable payment under section 4980H solely on account of a failure to offer coverage to the dependents for that plan year.

This relief is extended to plan years that begin in 2015 (2015 plan years). It applies to employers for the 2015 plan year with respect to plans under which (1) dependent coverage is not offered, (2) dependent coverage that does not constitute MEC is offered, or (3) dependent coverage is offered for some, but not all, dependents.

The relief is not available to the extent the employer offered dependent coverage during either the plan year that begins in 2013 (2013 plan year) or the 2014 plan year (meaning the relief is not available to the extent the employer had offered dependent coverage during either of those plan years and subsequently dropped that offer of coverage). If coverage was offered to some, but not all, dependents during the 2013 or 2014 plan year, the relief as extended applies only with respect to dependents who were not offered

coverage at any time during the 2013 or 2014 plan year (in other words, the relief as extended applies only with respect to dependents who were without an offer of coverage from the employer in both the 2013 and 2014 plan years). In addition, the relief is available only if the employer takes steps during the 2014 or 2015 plan year (or both) to extend coverage under the plan to dependents not offered coverage during the 2013 or 2014 plan year (or both). References in this section XV.D.5 of the preamble to dependents refer to dependents of the employer's full-time employees, and references to coverage (other than specific references to coverage that does not constitute MEC) refer to MEC. For a discussion of the definition of dependent under the final regulations, including the treatment of stepchildren and foster children, see section XI of this preamble.

6. 2015 Transition Relief for Applicable Large Employers With Fewer Than 100 Full-Time Employees (Including FTEs)

The Treasury Department and the IRS understand that application of section 4980H will involve changes for applicable large employers that did not previously offer coverage, or that did not offer affordable, minimum value coverage. A large percentage of those employers are in the smaller size range, such as those with fewer than 100 full-time employees (including FTEs). To assist these employers in transitioning into compliance with section 4980H, the transition relief described below is provided for all of 2015 plus, in the case of any non-calendar plan year that begins in 2015 (2015 plan year), the portion of that 2015 plan year that falls in 2016. For employers eligible for the transition relief described in this section XV.D.6, no assessable payment under section 4980H(a) or (b) will apply for any calendar month during 2015 or any calendar month during the portion of the 2015 plan year that falls in 2016.

a. Eligibility Conditions for Transition Relief

An employer is eligible for the transition relief described in this section XV.D.6 if it satisfies the following conditions:

(1) *Limited Workforce Size.* The employer employs on average at least 50 full-time employees (including FTEs) but fewer than 100 full-time employees (including FTEs) on business days during 2014. For this purpose, the determination of the number of full-time employees (including FTEs) is made in accordance with the otherwise applicable rules for determining status as an applicable large employer.[14]

(2) *Maintenance of Workforce and Aggregate Hours of Service.* During the period beginning on February 9, 2014, and ending on December 31, 2014, the employer does not reduce the size of its workforce or the overall hours of service of its employees in order to satisfy the workforce size condition set forth in paragraph (1) of this section XV.D.6. A reduction in workforce size or overall hours of service for bona fide business reasons will not be considered to have been made in order to satisfy the workforce size condition. For example, reductions of workforce size or overall hours of service because of business activity such as the sale of a division, changes in the economic marketplace in which the employer operates, terminations of employment for poor performance, or other similar changes unrelated to eligibility for the transition relief provided in this section XV.D.6 are for bona fide business reasons and will not affect eligibility for that transition relief.

(3) *Maintenance of Previously Offered Health Coverage.* Except as otherwise provided in this paragraph (3), during the coverage maintenance period the employer does not eliminate or materially reduce the health coverage, if any, it offered as of February 9, 2014. For purposes of this paragraph (3), in no event will an employer be treated as eliminating or materially reducing health coverage if (i) it continues to offer each employee who is eligible for coverage during the coverage maintenance period an employer contribution toward the cost of employee-only coverage that either (A) is at least 95 percent of the dollar amount of the contribution toward such coverage that the employer was offering on February 9, 2014, or (B) is the same (or a higher) percentage of the cost of coverage that the employer was offering to contribute toward coverage on February 9, 2014; (ii) in the event there is a change in benefits under the employee-only coverage offered, that coverage provides minimum value after the change; and (iii) the employer does not alter the terms of its group health plans to narrow or reduce the class or classes of employees (or the employees' dependents) to whom coverage under those plans was offered on February 9, 2014. For purposes of this paragraph, the term *coverage maintenance period* means (1) for an employer with a calendar year plan, the period beginning on February 9, 2014, and ending on December 31, 2015, and (2) for an employer with a non-calendar year plan, the period beginning on February 9, 2014, and ending on the last day of the plan year that begins in 2015.

For example, if on February 9, 2014, an employer was contributing $300 per month for coverage that costs $400 per month for employee-only coverage, and the employer continues to offer to contribute $300 per month after the cost of employee-only coverage increases to $425 per month for the plan year beginning on July 1, 2014, the increase in cost to the employee will not be treated for this purpose as an elimination or material reduction of health coverage offered.

(4) *Certification of Eligibility for Transition Relief.* The applicable large employer certifies on a prescribed form that it meets the eligibility requirements set forth in paragraphs (1) through (3). The forthcoming final regulations under section 6056 are expected to provide that an applicable large employer, or an applicable large employer member, that otherwise qualifies for the transition relief described in this section XV.D.6 will provide this certification as part of the transmittal form it is required to file with the IRS under the section 6056 regulations, in accordance with the instructions to that transmittal form. See section III of the preamble regarding section 6056.

b. Application of Transition Relief to Non-Calendar Year Plans

The transition relief described in this section XV.D.6 applies to all calendar months of 2015 plus any calendar months of 2016 that fall within the 2015 plan year. It is not available for an employer that modifies the plan year of its plan after February 9, 2014, to begin on a later calendar date (for example, changing the start date of the plan year from January 1 to December 1). Notwithstanding paragraph (a)(3) of this section XV.D.6, an employer with a non-calendar year plan meeting the coverage maintenance period requirements for 2015 may be eligible for the relief for 2015 even if the employer does not meet the coverage maintenance period requirements later (during the portion of the 2015 plan year falling in 2016).

[14] The rules for determining status as an applicable large employer include application of the aggregation rules under section 414 (see § 54.4980H–1(a)(16)), the rule regarding employers whose workforce exceeds the applicable threshold (which for this purpose is 99) for 120 days or fewer during the calendar year due to the employment of seasonal workers (see § 54.4980H–2(b)(2)), and the transition relief permitting the use of any consecutive month period during 2014 of at least six months in lieu of the entire calendar year as provided in section XV.D.3 of this preamble.

c. Application of Transition Relief to New Employers

As described in section V.B of this preamble, an employer that was not in existence on any day of the previous calendar year may be an applicable large employer for the current calendar year if the employer is reasonably expected to employ an average of at least 50 full-time employees (including FTEs) on business days during the current calendar year and it actually employs an average of at least 50 full-time employees (including FTEs) on business days during the calendar year. For employers first coming into existence in 2015 that are applicable large employers under the standard in the preceding sentence, the relief described in this section XV.D.6 applies if (1) the employer reasonably expects to employ and actually employs fewer than 100 full-time employees (including FTEs) on business days during 2015, (2) the employer reasonably expects to meet and actually meets the maintenance standards described in paragraphs (2) and (3) above, as measured from the date the employer is first in existence, and (3) the employer certifies in the manner described in paragraph (4) above.

d. Coordination With Other Transition Relief

For periods on or after January 1, 2016 (or, if applicable, for any period after the last day of the 2015 plan year), the transition relief set forth in section XV.D.1 (non-calendar plan years), section XV.D.2 (shorter measurement periods permitted for stability period starting during 2015), section XV.D.4 (offer of coverage for January 2015), section XV.D.5 (coverage for dependents), and section XV.D.7 (limited 2015 section 4980H(a) transition relief) of the preamble will not be available. The transition relief listed in the prior sentence is available only with respect to 2015 or, if applicable, the 2015 plan year and does not apply to an applicable large employer that is eligible for the relief described in this section XV.D.6 because that eligible employer will first become subject to a potential assessable payment under section 4980H after 2015 or, if applicable, after the 2015 plan year and, accordingly, already will have had the benefit of an extra year to plan for and implement changes. However, an employer may use the rule set forth in section XV.D.3 of the preamble (shorter period in 2014 permitted for determining applicable large employer status for 2015) in determining applicable large employer status and full-time employee count for 2015 (but not for any subsequent year).[15]

e. Example

The following example illustrates the transition relief described in this section XV.D.6 of the preamble:

(i) *Facts.* As of February 9, 2014, Employer A sponsors a group health plan with a calendar year plan year under which 40 of its full-time employees are offered coverage with an employer contribution of $300 per month for employee-only coverage. The offer of coverage is affordable with respect to some, but not all, of Employer A's full-time employees. During the period from February 9, 2014, through December 31, 2014, two of Employer A's employees voluntarily terminate employment and Employer A terminates three employees because of the non-renewal of a customer contract but does not otherwise reduce the size of its workforce or reduce any employee's hours of service. Had those five employees continued in employment throughout 2014, the employer would have had an average of 100 full-time employees (including FTEs) on business days in 2014. However, as a result of the terminations, it had an average of only 97 full-time employees (including FTEs) for business days in 2014. During the coverage maintenance period, Employer A does not change the eligibility requirements for the group health plan (including not amending it to eliminate its existing health coverage for dependents) and continues to make an employer contribution of $300 per month toward the cost of employee-only coverage that provides minimum valve. Employer A certifies in a timely manner as to its eligibility for the transition relief.

(ii) *Conclusion.* Employer A will not be subject to an assessable payment under section 4980H(a) or (b) for 2015.

[15] Section 54.4980H–2(b)(5) of the final regulations provides a transition rule for an employer's first year as an applicable large employer, subject to certain conditions. Because an employer qualifies for the relief set forth in § 54.4980H–2(b)(5) only for the first year that the employer is an applicable large employer, the relief set forth in § 54.4980H–2(b)(5) will not be available to an applicable large employer that is eligible for the relief described in this section XV.D.6 for the first year for which the employer may be subject to an assessable payment under section 4980H (generally 2016).

7. Limited 2015 Section 4980H(a) Transition Relief

a. Offers of Coverage to at Least 70 Percent (Rather Than 95 Percent) of Full-Time Employees (and Their Dependents)

For purposes of section 4980H(a), the final regulations provide that an applicable large employer member is treated as offering coverage to its full-time employees (and their dependents) for a month if, for that month, it offers coverage to all but five percent or, if greater, five, of its full-time employees. As provided in § 54.4980H–4(a), an employee is treated as having been offered coverage only if the employer also offered coverage to that employee's dependents. But see section XV.D.5 of this preamble for transition relief for a failure to offer coverage to dependents for the 2015 plan year.

As further transition relief, for each calendar month during 2015 and any calendar months during the 2015 plan year that fall in 2016, an applicable large employer member that offers coverage to at least 70 percent (or that fails to offer to no more than 30 percent) of its full-time employees (and, to the extent required under § 54.4980H–4(a) and the transition relief in section XV.D.5 of this preamble, their dependents) will not be subject to an assessable payment under section 4980H(a). Applicable large employer members qualifying for the transition relief set forth in this section XV.D.7.a continue to be subject to a potential assessable payment under section 4980H(b).

b. Calculation of Assessable Payments Under Section 4980H(a) for Applicable Large Employers With 100 or More Full-Time Employees (Including FTEs) for 2015

In general, an assessable payment under section 4980H(a) is equal to the number of all full-time employees (excluding 30 full-time employees) multiplied by one-twelfth of $2,000 for each calendar month. For purposes of the liability calculation under section 4980H(a), with respect to each calendar month, an applicable large employer member's number of full-time employees is reduced by that member's allocable share of 30. Accordingly, an applicable large employer with 50 full-time employees that is subject to an assessable payment under section 4980H(a) may be subject to an assessable payment based on 20 employees (that is, 50 minus 30) times one-twelfth of $2,000 for each calendar month. An applicable large employer member's allocation is equal to 30

allocated ratably among all members of the applicable large employer on the basis of the number of full-time employees employed by each applicable large employer member during the calendar month. See § 54.4980H–4(e).

For 2015 plus any calendar months of 2016 that fall within the employer's 2015 plan year, if an applicable large employer with 100 or more full-time employees (including FTEs) on business days during 2014 (or an applicable large employer member that is part of such an applicable large employer) is subject to an assessable payment under section 4980H(a), the assessable payment under section 4980H(a) with respect to the transition relief period will be calculated by reducing an applicable large employer member's number of full-time employees by that member's allocable share of 80 rather than 30. The rules set forth in § 54.4980H–4(e) apply with respect to allocation of the reduction by 80 full-time employees for the applicable large employer. For this transition relief period, the aggregate amount of assessable payment determined under section 4980H(b) for an applicable large employer member also may not exceed the potential assessable payment under section 4980H(a), including the reduction by the ratable portion of 80 as set forth in this paragraph, for that applicable large employer member.[16]

c. Application to Non-Calendar Year Plans

The transition relief described in this section XV.D.7 applies to all calendar months of 2015 plus any calendar months of 2016 that fall within the employer's 2015 plan year, and is available for an employer only if it did not modify the plan year of its plan after February 9, 2014, to begin on a later calendar date (for example, changing the start date of the plan year from January 1 to December 1).

d. Coordination With Other Transition Relief

The relief described in this section XV.D.7 of the preamble applies in addition to the forms of transition relief described in section XV.D.1 (non-calendar plan years), section XV.D.2 (shorter measurement periods permitted for stability period starting during 2015), section XV.D.3 (shorter period permitted in 2014 for determining applicable large employer status for 2015), section XV.D.4 (offer of coverage for January 2015), and section XV.D.5 (coverage for dependents) of this preamble.

*E. Interim Guidance With Respect to Multiemployer Arrangements*

In response to commenters' requests for special rules for employers participating in multiemployer plans in view of such plans' unique operating structures, section IX.D of the preamble to the proposed regulations, as corrected, contains transition guidance that is intended to provide an administratively feasible means for employers that contribute to multiemployer plans to comply with section 4980H.

Pursuant to this preamble, employers may rely on the interim guidance described in this section XV.E. This interim guidance is intended to continue the transition guidance originally set forth in section IX.D of the preamble to the proposed regulations, as corrected, and as clarified in this preamble. Any future guidance that limits the scope of the interim guidance will be applied prospectively and will apply no earlier than January 1 of the calendar year beginning at least six months after the date of issuance of the guidance.

This interim guidance applies to an applicable large employer member that is required by a collective bargaining agreement or an appropriate related participation agreement to make contributions, with respect to some or all of its employees, to a multiemployer plan that offers, to individuals who satisfy the plan's eligibility conditions, coverage that is affordable and provides MV, and that offers coverage to those individuals' dependents. Under this interim guidance, the applicable large employer member will not be treated, with respect to employees for whom the employer is required by the collective bargaining agreement or appropriate related participation agreement to make contributions to the multiemployer plan, as failing to offer the opportunity to enroll in MEC to full-time employees (and their dependents) for purposes of section 4980H(a), and will not be subject to an assessable payment under section 4980H(b). For purposes of this section XV.E of the preamble, whether the employee is a full-time employee is determined under section 4980H(c)(4), whether coverage is affordable is determined under section 36B(c)(2)(C)(i), and whether coverage provides MV is determined under section 36B(c)(2)(C)(ii).

For purposes of determining whether coverage under the multiemployer plan is affordable, employers participating in the plan may use any of the affordability safe harbors set forth in the final regulations. Coverage under a multiemployer plan will also be considered affordable with respect to a full-time employee if the employee's required contribution, if any, toward self-only health coverage under the plan does not exceed 9.5 percent of the wages reported to the qualified multiemployer plan, which may be determined based on actual wages or an hourly wage rate under the applicable collective bargaining agreement or participation agreement.

If any assessable payment were due under section 4980H, it would be payable by a participating applicable large employer member and that member would be responsible for identifying its full-time employees for this purpose (which would be based on hours of service for that employer). If the applicable large employer member contributes to one or more multiemployer plans and also maintains a single employer plan, the interim guidance applies to each multiemployer plan but not to the single employer plan.

One commenter asked whether the rule set out in section IX.D of the preamble to the proposed regulations, as corrected, applies to non-federal governmental multiemployer plans. The commenter noted that the proposed regulations do not define multiemployer plan but that section 414(f)(1) defines a multiemployer plan as a plan (A) to which more than one employer is required to contribute, (B) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and (C) which satisfies such other requirements as the Secretary of Labor may prescribe by regulation. The commenter asked whether the rule set out in section IX.D of the preamble to the proposed regulations, as corrected, applies to public sector multiemployer plans which are not subject to the jurisdiction of DOL. The rule set out in section IX.D of the preamble to the proposed regulations and in this section of the preamble applies to a multiemployer plan that is not subject to the jurisdiction of DOL if the plan meets the requirements of section 414(f)(1)(A) and (B).

[16] The number 80 applies for purposes of the 2015 transition rule in lieu of the number 30 that applies under the general rule because this maintains the same 20-full-time-employee difference between the applicable threshold number (50 under the general rule; 100 under the 2015 transition rule) and the number of full-time employees (30 under the general rule; 80 under the 2015 transition rule) by which the applicable large employer's number of full-time employees is reduced.

## XVI. Effective Dates and Reliance

Section 1513(d) of the Affordable Care Act provides that section 4980H applies to months beginning after December 31, 2013; however, Notice 2013–45 provides transition relief from section 4980H for 2014.

These final regulations are effective February 12, 2014. These final regulations are applicable for periods after December 31, 2014. Employers may rely on these final regulations for periods before January 1, 2015. If and to the extent an employer has relied on Notice 2012–58, the employer may continue to rely on Notice 2012–58 to the extent reliance is provided in section IV of that notice.

## Availability of IRS Documents

The IRS notices and other IRS guidance cited in this preamble are available in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)).

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) does not apply.

Pursuant to section 7805(f) of the Code, the proposed regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration (SBA Chief Counsel for Advocacy) for comment on their impact on small business, and the SBA Chief Counsel for Advocacy submitted comments on the regulations. The SBA Chief Counsel for Advocacy disagreed with the statement that the RFA does not apply to the proposed regulations because the regulations do not impose a collection of information on small entities. Specifically, the SBA Chief Counsel for Advocacy stated that the proposed regulations impose a collection because they require employers to maintain records for a number of calculations and the determination of whether employers are subject to section 4980H, including calculating full-time employees and FTEs and calculating affordability. However, the regulations do not contain any recordkeeping requirement. For purposes of the RFA, a recordkeeping requirement is a mandate to maintain specified records. 5 U.S.C. 601(8). Therefore, to constitute a recordkeeping requirement, the mandate to maintain specified records must be a requirement in addition to the general requirement in section 6001 that taxpayers must keep adequate books and records to support what they reported on their return. Thus, because a recordkeeping requirement is one that requires specified records, a regulation that does not require that particular records be maintained, but nonetheless prompts some taxpayers to maintain records consistent with the provisions of section 6001, does not impose a recordkeeping requirement. Neither the proposed nor final regulations require employers to maintain any specified records. Rather, the preambles to both the final and the proposed regulations provide that the otherwise generally applicable substantiation and recordkeeping requirements in section 6001 apply.

## Drafting Information

The principal authors of these final regulations are Kathryn Johnson and Shad Fagerland of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

## List of Subjects

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 54*

Excise taxes, Pensions, Reporting and recordkeeping requirements.

*26 CFR Part 301*

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 54, and 301 are amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

■ **Par. 2.** Section 1.1361–4 is amended as follows:

■ 1. In paragraph (a)(8)(i)(C), the language ''and 4412; and'' is removed and ''and 4412;'' is added in its place.

■ 2. In paragraph (a)(8)(i)(D), the language ''or 6427.'' is removed and ''or 6427; and'' is added in its place.

■ 3. Paragraph (a)(8)(i)(E) is added.

■ 4. In paragraph (a)(8)(ii), the language ''January 1, 2008.'' is removed and ''January 1, 2008, except that paragraph (a)(8)(i)(E) of this section applies for periods after December 31, 2014.'' is added in its place.

The addition reads as follows:

### § 1.1361–4 Effect of QSub election.

(a) * * *

(8) * * *

(i) * * *

(E) Assessment and collection of an assessable payment imposed by section 4980H and reporting required by section 6056.

* * * * *

## PART 54—PENSION EXCISE TAXES

■ **Par. 3.** The authority citation for part 54 is amended by adding entries in numerical order to read as follows:

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

Section 54.4980H–3 is also issued under 26 U.S.C. 4980H(c)(4)(B); * * *

■ **Par. 4.** Sections 54.4980H–0, 54.4980H–1, 54.4980H–2, 54.4980H–3, 54.4980H–4, 54.4980H–5, and 54.4980H–6 are added to read as follows:

Sec.

* * * * *

54.4980H–0 Table of contents.
54.4980H–1 Definitions.
54.4980H–2 Applicable large employer and applicable large employer member.
54.4980H–3 Determining full-time employees.
54.4980H–4 Assessable payments under section 4980H(a).
54.4980H–5 Assessable payments under section 4980H(b).
54.4980H–6 Administration and procedure.

* * * * *

### § 54.4980H–0 Table of contents.

This section lists the table of contents for §§ 54.4980H–1 through 54.4980H–6.

### § 54.4980H–1 Definitions.

(a) Definitions.

(1) Administrative period.

(2) Advance credit payment.

(3) Affordable Care Act.

(4) Applicable large employer.

(5) Applicable large employer member.

(6) Applicable premium tax credit.

(7) Bona fide volunteer.

(8) Calendar month.

(9) Church, or a convention or association of churches.

(10) Collective bargaining agreement.

(11) Cost-sharing reduction.

(12) Dependent.
(13) Educational organization.
(14) Eligible employer-sponsored plan.
(15) Employee.
(16) Employer.
(17) Employment break period.
(18) Exchange.
(19) Federal poverty line.
(20) Form W–2 wages.
(21) Full-time employee.
(22) Full-time equivalent employee (FTE).
(23) Government entity.
(24) Hour of service.
(25) Initial measurement period.
(26) Limited non-assessment period for certain employees.
(27) Minimum essential coverage.
(28) Minimum value.
(29) Month.
(30) New employee.
(31) Ongoing employee.
(32) Part-time employee.
(33) Period of employment.
(34) Person.
(35) Plan year.
(36) Predecessor employer.
(37) Qualified health plan.
(38) Seasonal employee.
(39) Seasonal worker.
(40) Section 1411 certification.
(41) Section 4980H(a) applicable payment amount.
(42) Section 4980H(b) applicable payment amount.
(43) Self-only coverage.
(44) Special unpaid leave.
(45) Stability period.
(46) Standard measurement period.
(47) Start date.
(48) United States.
(49) Variable hour employee.
(50) Week.
(b) Effective/applicability date.

**§ 54.4980H–2 Applicable large employer and applicable large employer member.**

(a) In general.
(b) Determining applicable large employer status.
(1) In general.
(2) Seasonal worker exception.
(3) Employers not in existence in preceding calendar year.
(4) Special rules for government entities, churches, and conventions and associations of churches.
(5) Transition rule for an employer's first year as an applicable large employer.
(c) Full-time equivalent employees (FTEs).
(1) In general.
(2) Calculating the number of FTEs.
(d) Examples.
(e) Additional guidance.
(f) Effective/applicability date.

**§ 54.4980H–3 Determining full-time employees.**

(a) In general.
(b) Hours of service.
(1) In general.
(2) Hourly employees calculation.
(3) Non-hourly employees calculation.
(c) Monthly measurement method.
(1) In general.
(2) Employee first otherwise eligible for an offer of coverage.
(3) Use of weekly periods.
(4) Employees rehired after termination of employment or resuming service after other absence.
(5) Examples.
(d) Look-back measurement method.
(1) Ongoing employees.
(2) New non-variable hour, new non-seasonal and new non-part-time employees.
(3) New variable hour employees, new seasonal employees, and new part-time employees.
(4) Transition from new variable hour employee, new seasonal employee, or new part-time employee to ongoing employee.
(5) Examples.
(6) Employees rehired after termination of employment or resuming service after other absence.
(e) Use of the look-back measurement method and the monthly measurement method for different categories of employees.
(f) Changes in employment status resulting in a change in full-time employee determination method.
(1) Change in employment status from a position to which a look-back measurement method applies to a position to which the monthly measurement method applies, or vice versa.
(2) Special rule for certain employees to whom minimum value coverage has been continuously offered.
(g) Nonpayment or late payment of premiums.
(h) Additional guidance.
(i) Effective/applicability date.

**§ 54.4980H–4 Assessable payments under section 4980H(a).**

(a) In general.
(b) Offer of coverage.
(1) In general.
(2) Offer of coverage on behalf of another entity.
(c) Partial calendar month.
(d) Application to applicable large employer member.
(e) Allocated reduction of 30 full-time employees.
(f) Example.
(g) Additional guidance.
(h) Effective/applicability date.

**§ 54.4980H–5 Assessable payments under section 4980H(b).**

(a) In general.
(b) Offer of coverage.
(c) Partial calendar month.
(d) Applicability to applicable large employer member.
(e) Affordability.
(1) In general.
(2) Affordability safe harbors for section 4980H(b) purposes.
(f) Additional guidance.
(g) Effective/applicability date.

**§ 54.4980H–6 Administration and procedure.**

(a) In general.
(b) Effective/applicability date.

**§ 54.4980H–1 Definitions.**

(a) *Definitions.* The definitions in this section apply only for purposes of this section and §§ 54.4980H–2 through 54.4980H–6.

(1) *Administrative period.* The term *administrative period* means an optional period, selected by an applicable large employer member, of no longer than 90 days beginning immediately following the end of a measurement period and ending immediately before the start of the associated stability period. The administrative period also includes the period between a new employee's start date and the beginning of the initial measurement period, if the initial measurement period does not begin on the employee's start date.

(2) *Advance credit payment.* The term *advance credit payment* means an advance payment of the premium tax credit as provided in Affordable Care Act section 1412 (42 U.S.C. 18082).

(3) *Affordable Care Act.* The term *Affordable Care Act* means the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)), as amended by the Medicare and Medicaid Extenders Act of 2010, Public Law 111–309 (124 Stat. 3285 (2010)), the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, Public Law 112–9 (125 Stat. 36 (2011)), the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10 (125 Stat. 38 (2011)), and the 3% Withholding Repeal and Job Creation Act, Public Law 112–56 (125 Stat. 711 (2011)).

(4) *Applicable large employer.* The term *applicable large employer* means, with respect to a calendar year, an employer that employed an average of at least 50 full-time employees (including full-time equivalent employees) on business days during the preceding calendar year. For rules relating to the determination of applicable large employer status, see § 54.4980H–2.

(5) *Applicable large employer member.* The term *applicable large employer member* means a person that, together with one or more other persons, is treated as a single employer that is an applicable large employer. For this purpose, if a person, together with one or more other persons, is treated as a single employer that is an applicable large employer on any day of a calendar month, that person is an applicable large employer member for that calendar month. If the applicable large employer comprises one person, that one person is the applicable large employer member. An applicable large employer member does not include a person that is not an employer or only an employer of employees with no hours of service for the calendar year. For rules for government entities, and churches, or conventions or associations of churches, see § 54.4980H–2(b)(4).

(6) *Applicable premium tax credit.* The term *applicable premium tax credit* means any premium tax credit that is allowed or paid under section 36B and any advance payment of such credit.

(7) *Bona fide volunteer.* The term *bona fide volunteer* means an employee of a government entity or an organization described in section 501(c) that is exempt from taxation under section 501(a) whose only compensation from that entity or organization is in the form of—

(i) Reimbursement for (or reasonable allowance for) reasonable expenses incurred in the performance of services by volunteers, or

(ii) Reasonable benefits (including length of service awards), and nominal fees, customarily paid by similar entities in connection with the performance of services by volunteers.

(8) *Calendar month.* The term *calendar month* means one of the 12 full months named in the calendar, such as January, February, or March.

(9) *Church or a convention or association of churches.* The term *church or a convention or association of churches* has the same meaning as provided in § 1.170A–9(b).

(10) *Collective bargaining agreement.* The term *collective bargaining agreement* means an agreement that the Secretary of Labor determines to be a collective bargaining agreement, provided that the health benefits provided under the collective bargaining agreement are the subject of good faith bargaining between employee representatives and one or more employers, and the agreement between employee representatives and one or more employers satisfies section 7701(a)(46).

(11) *Cost-sharing reduction.* The term *cost-sharing reduction* means a cost-sharing reduction and any advance payment of the reduction as defined under section 1402 of the Affordable Care Act and 45 CFR 155.20.

(12) *Dependent.* The term *dependent* means a child (as defined in section 152(f)(1) but excluding a stepson, stepdaughter or an eligible foster child (and excluding any individual who is excluded from the definition of dependent under section 152 by operation of section 152(b)(3))) of an employee who has not attained age 26. A child attains age 26 on the 26th anniversary of the date the child was born. A child is a dependent for purposes of section 4980H for the entire calendar month during which he or she attains age 26. Absent knowledge to the contrary, applicable large employer members may rely on an employee's representation about that employee's children and the ages of those children. The term *dependent* does not include the spouse of an employee.

(13) *Educational organization.* The term *educational organization* means an entity described in § 1.170A–9(c)(1), whether or not described in section 501(c)(3) and tax-exempt under section 501(a). Thus, the term *educational organization* includes taxable entities, tax-exempt entities and government entities.

(14) *Eligible employer-sponsored plan.* The term *eligible employer-sponsored plan* has the same meaning as provided under section 5000A(f)(2) and the regulations thereunder and any other applicable guidance.

(15) *Employee.* The term *employee* means an individual who is an employee under the common-law standard. See § 31.3401(c)–1(b). For purposes of this paragraph (a)(15), a leased employee (as defined in section 414(n)(2)), a sole proprietor, a partner in a partnership, a 2-percent S corporation shareholder, or a worker described in section 3508 is not an employee.

(16) *Employer.* The term *employer* means the person that is the employer of an employee under the common-law standard. See § 31.3121(d)–1(c). For purposes of determining whether an employer is an applicable large employer, all persons treated as a single employer under section 414(b), (c), (m), or (o) are treated as a single employer. Thus, all employees of a controlled group of entities under section 414(b) or (c), an affiliated service group under section 414(m), or an entity in an arrangement described under section 414(o), are taken into account in determining whether the members of the controlled group or affiliated service group together are an applicable large employer. For purposes of determining applicable large employer status, the term *employer* also includes a predecessor employer (see paragraph (a)(36) of this section) and a successor employer.

(17) *Employment break period.* The term *employment break period* means a period of at least four consecutive weeks (disregarding special unpaid leave), measured in weeks, during which an employee of an educational organization is not credited with hours of service for an applicable large employer.

(18) *Exchange.* The term *Exchange* means an Exchange as defined in 45 CFR 155.20.

(19) *Federal poverty line.* The term *federal poverty line* means for a plan year any of the poverty guidelines (updated periodically in the **Federal Register** by the Secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2)) in effect within six months before the first day of the plan year of the applicable large employer member's health plan, as selected by the applicable large employer member.

(20) *Form W–2 wages.* The term *Form W–2 wages* with respect to an employee refers to the amount of wages as defined under section 3401(a) for the applicable calendar year (required to be reported in Box 1 of the Form W–2 (Wage and Tax Statement)) received from an applicable large employer.

(21) *Full-time employee*—(i) *In general.* The term *full-time employee* means, with respect to a calendar month, an employee who is employed an average of at least 30 hours of service per week with an employer. For rules on the determination of whether an employee is a full-time employee, including a description of the look-back measurement method and the monthly measurement method, see § 54.4980H–3. The look-back measurement method for identifying full-time employees is available only for purposes of determining and computing liability under section 4980H and not for the purpose of determining status as an applicable large employer under § 54.4980H–2.

(ii) *Monthly equivalency.* Except as otherwise provided in paragraph (a)(21)(iii) of this section, 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week, and this 130 hours of service monthly equivalency applies for both the look-back measurement method and the monthly measurement method for determining full-time employee status.

(iii) *Determination of full-time employee status using weekly rule under*

*the monthly measurement method.* Under the optional weekly rule set forth in § 54.4980H–3(c)(3), full-time employee status for certain calendar months is based on hours of service over four weekly periods and for certain other calendar months is based on hours of service over five weekly periods. With respect to a month with four weekly periods, an employee with at least 120 hours of service is a full-time employee, and with respect to a month with five weekly periods, an employee with at least 150 hours of service is a full-time employee. For purposes of this rule, the seven continuous calendar days that constitute a week (for example Sunday through Saturday) must be consistently applied for all calendar months of the calendar year.

(22) *Full-time equivalent employee (FTE).* The term *full-time equivalent employee,* or *FTE,* means a combination of employees, each of whom individually is not treated as a full-time employee because he or she is not employed on average at least 30 hours of service per week with an employer, who, in combination, are counted as the equivalent of a full-time employee solely for purposes of determining whether the employer is an applicable large employer. For rules on the method for determining the number of an employer's full-time equivalent employees, or FTEs, see § 54.4980H–2(c).

(23) *Government entity.* The term *government entity* means the government of the United States, any State or political subdivision thereof, any Indian tribal government (as defined in section 7701(a)(40)) or subdivision of an Indian tribal government (determined in accordance with section 7871(d)), or any agency or instrumentality of any of the foregoing.

(24) *Hour of service*—(i) *In general.* The term *hour of service* means each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer; and each hour for which an employee is paid, or entitled to payment by the employer for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence (as defined in 29 CFR 2530.200b–2(a)). For the rules for determining an employee's hours of service, see § 54.4980H–3.

(ii) *Excluded hours*—(A) *Bona fide volunteers.* The term *hour of service* does not include any hour for services performed as a bona fide volunteer.

(B) *Work-study program.* The term *hour of service* does not include any hour for services to the extent those services are performed as part of a Federal Work-Study Program as defined under 34 CFR 675 or a substantially similar program of a State or political subdivision thereof.

(C) *Services outside the United States.* The term *hour of service* does not include any hour for services to the extent the compensation for those services constitutes income from sources without the United States (within the meaning of sections 861 through 863 and the regulations thereunder).

(iii) *Service for other applicable large employer members.* In determining hours of service and status as a full-time employee for all purposes under section 4980H, an hour of service for one applicable large employer member is treated as an hour of service for all other applicable large employer members for all periods during which the applicable large employer members are part of the same group of employers forming an applicable large employer.

(25) *Initial measurement period.* The term *initial measurement period* means a period selected by an applicable large employer member of at least three consecutive months but not more than 12 consecutive months used by the applicable large employer as part of the look-back measurement method in § 54.4980H–3(d).

(26) *Limited non-assessment period for certain employees.* References to the *limited non-assessment period for certain employees* refers to the limited period during which an employer will not be subject to an assessable payment under section 4980H(a), and in certain cases section 4980H(b), with respect to an employee as set forth in—

(i) Section 54.4980H–2(b)(5) (regarding the transition rule for an employer's first year as an applicable large employer),

(ii) Section 54.4980H–3(c)(2) (regarding the application of section 4980H for the three full calendar month period beginning with the first full calendar month in which an employee is first otherwise eligible for an offer of coverage under the monthly measurement method),

(iii) Section 54.4980H–3(d)(2)(iii) (regarding the application of section 4980H during the initial three full calendar months of employment for an employee reasonably expected to be a full-time employee at the start date, under the look-back measurement method),

(iv) Section 54.4980H–3(d)(3)(iii) (regarding the application of section 4980H during the initial measurement period to a new variable hour employee, seasonal employee or part-time employee determined to be employed on average at least 30 hours of service per week, under the look-back measurement method),

(v) Section 54.4980H–3(d)(3)(vii) (regarding the application of section 4980H following an employee's change in employment status to a full-time employee during the initial measurement period, under the look-back measurement method), and

(vi) Section 54.4980H–4(c) and § 54.4980H–5(c) (regarding the application of section 4980H to the calendar month in which an employee's start date occurs on a day other than the first day of the calendar month).

(27) *Minimum essential coverage.* The term *minimum essential coverage,* or *MEC,* has the same meaning as provided in section 5000A(f) and any regulations or other guidance thereunder.

(28) *Minimum value.* The term *minimum value* has the same meaning as provided in section 36B(c)(2)(C)(ii) and any regulations or other guidance thereunder.

(29) *Month.* The term *month* means—

(i) A *calendar month* as defined in paragraph (a)(8) of this section, or

(ii) The period that begins on any date following the first day of a calendar month and that ends on the immediately preceding date in the immediately following calendar month (for example, from February 2 to March 1 or from December 15 to January 14).

(30) *New employee.* Under the look-back measurement method, the term *new employee* means an employee who has been employed by an applicable large employer for less than one complete standard measurement period; for treatment of the employee as a new employee or continuing employee under the look-back measurement method following a period for which no hours of service are earned, see the rehire and continuing employee rules at § 54.4980H–3(d)(6). Under the monthly measurement method, the term *new employee* means an employee who either has not previously been employed by the applicable large employer or has previously been employed by the applicable large employer but is treated as a new employee under the rehire and continuing employee rules at § 54.4980H–3(c)(4).

(31) *Ongoing employee.* The term *ongoing employee* means an employee who has been employed by an applicable large employer member for at least one complete standard measurement period. For the treatment of an ongoing employee as a new employee or continuing employee following a period for which no hours

of service are earned, see the rehire and continuing employee rules at § 54.4980H–3(d)(6).

(32) *Part-time employee.* The term *part-time employee* means a new employee who the applicable large employer member reasonably expects to be employed on average less than 30 hours of service per week during the initial measurement period, based on the facts and circumstances at the employee's start date. Whether an employer's determination that a new employee is a part-time employee is reasonable is based on the facts and circumstances at the employee's start date. Factors to consider in determining a new employee's full-time employee status are set forth in § 54.4980H–3(d)(2)(ii).

(33) *Period of employment.* The term *period of employment* means the period of time beginning on the first date for which an employee is credited with an hour of service for an applicable large employer (including any member of that applicable large employer) and ending on the last date on which the employee is credited with an hour of service for that applicable large employer, both dates inclusive. An employee may have one or more periods of employment with the same applicable large employer.

(34) *Person.* The term *person* has the same meaning as provided in section 7701(a)(1) and the regulations thereunder.

(35) *Plan year.* A *plan year* must be twelve consecutive months, unless a short plan year of less than twelve consecutive months is permitted for a valid business purpose. A *plan year* is permitted to begin on any day of a year and must end on the preceding day in the immediately following year (for example, a plan year that begins on October 15, 2015, must end on October 14, 2016). A calendar year *plan year* is a period of twelve consecutive months beginning on January 1 and ending on December 31 of the same calendar year. Once established, a plan year is effective for the first plan year and for all subsequent plan years, unless changed, provided that such change will only be recognized if made for a valid business purpose. A change in the plan year is not permitted if a principal purpose of the change in plan year is to circumvent the rules of section 4980H or these regulations.

(36) *Predecessor employer.* [Reserved]

(37) *Qualified health plan.* The term *qualified health plan* means a qualified health plan as defined in Affordable Care Act section 1301(a) (42 U.S.C. 18021(a)), but does not include a catastrophic plan described in Affordable Care Act section 1302(e) (42 U.S.C. 18022(e)).

(38) *Seasonal employee.* The term *seasonal employee* means an employee who is hired into a position for which the customary annual employment is six months or less.

(39) *Seasonal worker.* The term *seasonal worker* means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including (but not limited to) workers covered by 29 CFR 500.20(s)(1), and retail workers employed exclusively during holiday seasons. Employers may apply a reasonable, good faith interpretation of the term *seasonal worker* and a reasonable good faith interpretation of 29 CFR 500.20(s)(1) (including as applied by analogy to workers and employment positions not otherwise covered under 29 CFR 500.20(s)(1)).

(40) *Section 1411 Certification.* The term *Section 1411 Certification* means the certification received as part of the process established by the Secretary of Health and Human Services under which an employee is certified to the employer under section 1411 of the Affordable Care Act as having enrolled for a calendar month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee.

(41) *Section 4980H(a) applicable payment amount.* The term *section 4980H(a) applicable payment amount* means, with respect to any calendar month, 1/12 of $2,000, adjusted for inflation in accordance with section 4980H(c)(5) and any applicable guidance thereunder.

(42) *Section 4980H(b) applicable payment amount.* The term section *4980H(b) applicable payment amount* means, with respect to any calendar month, 1/12 of $3,000, adjusted for inflation in accordance with section 4980H(c)(5) and any applicable guidance thereunder.

(43) *Self-only coverage.* The term *self-only coverage* means health insurance coverage provided to only one individual, generally the employee.

(44) *Special unpaid leave.* The term *special unpaid leave* means—

(i) Unpaid leave that is subject to the Family and Medical Leave Act of 1993 (FMLA), Public Law 103–3, 29 U.S.C. 2601 et seq.;

(ii) Unpaid leave that is subject to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103–353, 38 U.S.C. 4301 et seq.; or

(iii) Unpaid leave on account of jury duty.

(45) *Stability period.* The term *stability period* means a period selected by an applicable large employer member that immediately follows, and is associated with, a standard measurement period or an initial measurement period (and, if elected by the employer, the administrative period associated with that standard measurement period or initial measurement period), and is used by the applicable large employer member as part of the look-back measurement method in § 54.4980H–3(d).

(46) *Standard measurement period.* The term *standard measurement period* means a period of at least three but not more than 12 consecutive months that is used by an applicable large employer member as part of the look-back measurement method in § 54.4980H–3(d). See § 54.4980H–3(d)(1)(ii) for rules on the use of payroll periods that include the beginning and end dates of the measurement period.

(47) *Start date.* The term *start date* means the first date on which an employee is required to be credited with an hour of service with an employer. For rules relating to when, following a period for which an employee does not earn an hour of service, that employee may be treated as a new employee with a new start date rather than a continuing employee, see the rehire and continuing employee rules at § 54.4980H–3(c)(4) and § 54.4980H–3(d)(6).

(48) *United States.* The term *United States* means United States as defined in section 7701(a)(9).

(49) *Variable hour employee*–(i) *In general.* The term *variable hour employee* means an employee if, based on the facts and circumstances at the employee's start date, the applicable large employer member cannot determine whether the employee is reasonably expected to be employed on average at least 30 hours of service per week during the initial measurement period because the employee's hours are variable or otherwise uncertain.

(ii) *Factors*—(A) *In general.* Factors to consider in determining whether it can be determined that the employee is reasonably expected to be (or reasonably expected not to be) employed on average at least 30 hours of service per week during the initial measurement period include, but are not limited to, whether the employee is replacing an employee who was a full-time employee or a variable hour employee, the extent to which the hours of service of employees in the same or comparable positions have actually varied above and below an average of 30 hours of service per week during recent measurement periods, and whether the

job was advertised, or otherwise communicated to the new employee or otherwise documented (for example, through a contract or job description) as requiring hours of service that would average at least 30 hours of service per week, less than 30 hours of service per week, or may vary above and below an average of 30 hours of service per week. These factors are only relevant for a particular new employee if the employer has no reason to anticipate that the facts and circumstances related to that new employee will be different. In all cases, no single factor is determinative. For purposes of determining whether an employee is a variable hour employee, the applicable large employer member may not take into account the likelihood that the employee may terminate employment with the applicable large employer (including any member of the applicable large employer) before the end of the initial measurement period.

(B) *Additional factors for an employee hired by an employer for temporary placement at an unrelated entity.* In the case of an individual who, under all the facts and circumstances, is the employee of an entity (referred to solely for purposes of this paragraph (a)(49) as a ''temporary staffing firm'') that hired such individual for temporary placement at an unrelated entity that is not the common law employer, additional factors to consider to determine whether the employee is reasonably expected to be (or reasonably expected not to be) employed by the temporary staffing firm on average at least 30 hours of service per week during the initial measurement period include, but are not limited to, whether other employees in the same position of employment with the temporary staffing firm, as part of their continuing employment, retain the right to reject temporary placements that the temporary staffing firm offers the employee; typically have periods during which no offer of temporary placement is made; typically are offered temporary placements for differing periods of time; and typically are offered temporary placements that do not extend beyond 13 weeks.

(C) *Educational organizations.* An employer that is an educational organization cannot take into account the potential for, or likelihood of, an employment break period in determining its expectation of future hours of service.

(iii) *Application only for look-back measurement method.* The term *variable hour employee* is used as a category of employees under the look-back measurement method and is not relevant to the monthly measurement method.

(50) *Week.* The term *week* means any period of seven consecutive calendar days applied consistently by the applicable large employer member.

(b) *Effective/applicability date.* This section is applicable for periods after December 31, 2014.

**§ 54.4980H–2 Applicable large employer and applicable large employer member.**

(a) *In general.* Section 4980H applies to an applicable large employer and to all of the applicable large employer members that comprise that applicable large employer.

(b) *Determining applicable large employer status*—(1) *In general.* An employer's status as an applicable large employer for a calendar year is determined by taking the sum of the total number of full-time employees (including any seasonal workers) for each calendar month in the preceding calendar year and the total number of FTEs (including any seasonal workers) for each calendar month in the preceding calendar year, and dividing by 12. The result, if not a whole number, is then rounded to the next lowest whole number. If the result of this calculation is less than 50, the employer is not an applicable large employer for the current calendar year. If the result of this calculation is 50 or more, the employer is an applicable large employer for the current calendar year, unless the seasonal worker exception in paragraph (b)(2) of this section applies.

(2) *Seasonal worker exception.* If the sum of an employer's full-time employees and FTEs exceeds 50 for 120 days or less during the preceding calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days are seasonal workers, the employer is not considered to employ more than 50 full-time employees (including FTEs) and the employer is not an applicable large employer for the current calendar year. In the case of an employer that was not in existence on any business day during the preceding calendar year, if the employer reasonably expects that the sum of its full-time employees and FTEs for the current calendar year will exceed 50 for 120 days or less during the calendar year, and that the employees in excess of 50 who will be employed during that period of no more than 120 days will be seasonal workers, the employer is not an applicable large employer for the current calendar year. For purposes of this paragraph (b)(2) only, four calendar months may be treated as the equivalent of 120 days. The four calendar months and the 120 days are not required to be consecutive.

(3) *Employers not in existence in preceding calendar year.* An employer not in existence throughout the preceding calendar year is an applicable large employer for the current calendar year if the employer is reasonably expected to employ an average of at least 50 full-time employees (taking into account FTEs) on business days during the current calendar year and it actually employs an average of at least 50 full-time employees (taking into account FTEs) on business days during the calendar year. An employer is treated as not having been in existence throughout the prior calendar year only if the employer was not in existence on any business day in the prior calendar year. See paragraph (b)(2) of this section for the application of the seasonal worker exception to employers not in existence in the preceding calendar year.

(4) *Special rules for government entities, churches, and conventions and associations of churches.* [Reserved]

(5) *Transition rule for an employer's first year as an applicable large employer.* With respect to an employee who was not offered coverage by the employer at any point during the prior calendar year, if the applicable large employer offers coverage to the employee on or before April 1 of the first calendar year for which the employer is an applicable large employer, the employer will not be subject to an assessable payment under section 4980H by reason of its failure to offer coverage to the employee for January through March of that year, provided that this relief applies only with respect to potential liability under section 4980H(b) (for January through March of the first calendar year for which the employer is an applicable large employer) if the coverage offered by April 1 provides minimum value. If the employer does not offer coverage to the employee by April 1, the employer may be subject to a section 4980H(a) assessable payment with respect January through March of the first calendar year for which the employer is an applicable large employer in addition to any later calendar months for which coverage was not offered. If the employer offers coverage to the employee by April 1 that does not provided minimum value, the employer may be subject to a section 4980H(b) assessable payment with respect to the employee for January through March of the first calendar year for which the employer is an applicable large employer in addition to any later calendar months for which coverage does not provide minimum value or is not affordable. This rule applies only

during the first year that an employer is an applicable large employer (and would not apply if, for example, the employer falls below the 50 full-time employee (plus FTE) threshold for a subsequent calendar year and then increases employment and becomes an applicable large employer again).

(c) *Full-time equivalent employees (FTEs)*—(1) *In general.* In determining whether an employer is an applicable large employer, the number of FTEs it employed during the preceding calendar year is taken into account. All employees (including seasonal workers) who were not employed on average at least 30 hours of service per week for a calendar month in the preceding calendar year are included in calculating the employer's FTEs for that calendar month.

(2) *Calculating the number of FTEs.* The number of FTEs for each calendar month in the preceding calendar year is determined by calculating the aggregate number of hours of service for that calendar month for employees who were not full-time employees (but not more than 120 hours of service for any employee) and dividing that number by 120. In determining the number of FTEs for each calendar month, fractions are taken into account; an employer may round the number of FTEs for each calendar month to the nearest one hundredth.

(d) *Examples.* The following examples illustrate the rules of paragraphs (a) through (c) of this section. In these examples, hours of service are computed following the rules set forth in § 54.4980H–3, and references to years refer to calendar years unless otherwise specified. The employers in *Example 2* through *Example 6* are each the sole applicable large employer member of the applicable large employer, as determined under section 414(b), (c), (m), and (o).

*Example 1 (Applicable large employer/controlled group).* (i) *Facts.* For all of 2015 and 2016, Corporation Z owns 100 percent of all classes of stock of Corporation Y and Corporation X. Corporation Z has no employees at any time in 2015. For every calendar month in 2015, Corporation Y has 40 full-time employees and Corporation X has 60 full-time employees. Corporations Z, Y, and X are a controlled group of corporations under section 414(b).

(ii) *Conclusion.* Because Corporations Z, Y and X have a combined total of 100 full-time employees during 2015, Corporations Z, Y, and X together are an applicable large employer for 2016. Each of Corporations Z, Y and X is an applicable large employer member for 2016.

*Example 2 (Applicable large employer with FTEs).* (i) *Facts.* During each calendar month of 2015, Employer W has 20 full-time employees each of whom averages 35 hours of service per week, 40 employees each of whom averages 90 hours of service per calendar month, and no seasonal workers.

(ii) *Conclusion.* Each of the 20 employees who average 35 hours of service per week count as one full-time employee for each calendar month. To determine the number of FTEs for each calendar month, the total hours of service of the employees who are not full-time employees (but not more than 120 hours of service per employee) are aggregated and divided by 120. The result is that the employer has 30 FTEs for each calendar month ($40 \times 90 = 3{,}600$, and $3{,}600 \div 120 = 30$). Because Employer W has 50 full-time employees (the sum of 20 full-time employees and 30 FTEs) during each calendar month in 2015, and because the seasonal worker exception is not applicable, Employer W is an applicable large employer for 2016.

*Example 3 (Seasonal worker exception).* (i) *Facts.* During 2015, Employer V has 40 full-time employees for the entire calendar year, none of whom are seasonal workers. In addition, Employer V also has 80 seasonal workers who are full-time employees and who work for Employer V from September through December 2015. Employer V has no FTEs during 2015.

(ii) *Conclusion.* Before applying the seasonal worker exception, Employer V has 40 full-time employees during each of eight calendar months of 2015, and 120 full-time employees during each of four calendar months of 2015, resulting in an average of 66.67 full-time employees for the year. However, Employer V's workforce exceeded 50 full-time employees (counting seasonal workers) for no more than four calendar months (treated as the equivalent of 120 days) in calendar year 2015, and the number of full-time employees would be less than 50 during those months if seasonal workers were disregarded. Accordingly, because after application of the seasonal worker exception described in paragraph (b)(2) of this section Employer V is not considered to employ more than 50 full-time employees, Employer V is not an applicable large employer for 2016.

*Example 4 (Seasonal workers and other FTEs).* (i) *Facts.* Same facts as *Example 3,* except that Employer V has 20 FTEs in August, some of whom are seasonal workers.

(ii) *Conclusion.* The seasonal worker exception described in paragraph (b)(2) of this section does not apply if the number of an employer's full-time employees (including seasonal workers) and FTEs exceeds 50 for more than 120 days during the calendar year. Because Employer V has at least 50 full-time employees for a period greater than four calendar months (treated as the equivalent of 120 days) during 2015, the exception described in paragraph (b)(2) of this section does not apply. Employer V averaged 68 full-time employees in 2015: $[(40 \times 7) + (60 \times 1) + (120 \times 4)] \div 12 = 68.33$, and accordingly, Employer V is an applicable large employer for calendar year 2016.

*Example 5 (New employer).* (i) *Facts.* Corporation S is incorporated on January 1, 2016. On January 1, 2016, Corporation S has three employees. However, prior to incorporation, Corporation S's owners purchased a factory intended to open within two calendar months of incorporation and to employ approximately 100 full-time employees. By March 15, 2016, Corporation S has more than 75 full-time employees.

(ii) *Conclusion.* Because Corporation S can reasonably be expected to employ on average at least 50 full-time employees on business days during 2016, and actually employs an average of at least 50 full-time employees on business days during 2016, Corporation S is an applicable large employer (and an applicable large employer member) for calendar year 2016.

*Example 6 (First year as applicable large employer).* (i) *Facts.* As of January 1, 2015, Employer R has been in existence for several years and did not average 50 or more full-time employees (including FTEs) on business days during 2014. Employer R averages 50 or more full-time employees on business days during 2015, so that for 2016 Employer R is an applicable large employer, for the first time. For all the calendar months of 2016, Employer R has the same 60 full-time employees. Employer R offered 20 of those full-time employees healthcare coverage during 2015, and offered those same employees coverage providing minimum value for 2016. With respect to the 40 full-time employees who were not offered coverage during 2015, Employer R offers coverage providing minimum value for calendar months April 2016 through December 2016.

(ii) *Conclusion.* For the 40 full-time employees not offered coverage during 2015 and offered coverage providing minimum value for the calendar months April 2016 through December 2016, the failure to offer coverage during the calendar months January 2016 through March 2016 will not result in an assessable payment under section 4980H with respect to those employees for those three calendar months. For those same 40 full-time employees, the offer of coverage during the calendar months April 2016 through December 2016 may result in an assessable payment under section 4980H(b) with respect to any employee for any calendar month for which the offer is not affordable and for which Employer R has received a Section 1411 Certification. For the other 20 full-time employees, the offer of coverage during 2016 may result in an assessable payment under section 4980H(b) for any calendar month if the offer is not affordable and Employer R has received a Section 1411 Certification with respect to the employee who received the offer of coverage. For all calendar months of 2016, Employer R will not be subject to an assessable payment under section 4980H(a).

(e) *Additional guidance.* With respect to an employer's status as an applicable large employer, the Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(f) *Effective/applicability date.* This section is applicable for periods after December 31, 2014.

**§ 54.4980H–3 Determining full-time employees.**

(a) *In general.* This section sets forth the rules for determining hours of service and status as a full-time employee for purposes of section 4980H. These regulations provide two methods for determining full-time employee status—the monthly measurement method, set forth in paragraph (c) of this section, and the look-back measurement method, set forth in paragraph (d) of this section. The monthly measurement method applies for purposes of determining and calculating liability under section 4980H(a) and (b), as well as, with respect to paragraph (c)(1) of this section, determination of applicable large employer status (except with respect to the weekly rule under the monthly measurement method). The look-back measurement method applies solely for purposes of determining and calculating liability under section 4980H(a) and (b) (and not for purposes of determining status as an applicable large employer). See § 54.4980H–1(a)(21) for the definition of full-time employee. The rules set forth in this section prescribe the minimum standards for determining status as a full-time employee for purposes of section 4980H; treatment of additional employees as full-time employees for other purposes does not affect section 4980H liability if those employees are not full-time employees under the look-back measurement method or the monthly measurement method.

(b) *Hours of service*—(1) *In general.* The following rules on the calculation of hours of service apply for purposes of applying both the look-back measurement method and the monthly measurement method.

(2) *Hourly employees calculation.* Under the look-back measurement method and the monthly measurement method, for employees paid on an hourly basis, an employer must calculate actual hours of service from records of hours worked and hours for which payment is made or due.

(3) *Non-hourly employees calculation*—(i) *In general.* Except as otherwise provided, under the look-back measurement method and the monthly measurement method, for employees paid on a non-hourly basis, an employer must calculate hours of service by using one of the following methods:

(A) Using actual hours of service from records of hours worked and hours for which payment is made or due;

(B) Using a days-worked equivalency whereby the employee is credited with eight hours of service for each day for which the employee would be required to be credited with at least one hour of service in accordance with paragraph (b)(2) of this section; or

(C) Using a weeks-worked equivalency whereby the employee is credited with 40 hours of service for each week for which the employee would be required to be credited with at least one hour of service in accordance with paragraph (b)(2) of this section.

(ii) *Change in method.* An employer must use one of the three methods in paragraph (b)(3)(i) of this section for calculating the hours of service for non-hourly employees. An employer is not required to use the same method for all non-hourly employees, and may apply different methods for different categories of non-hourly employees, provided the categories are reasonable and consistently applied. Similarly, an applicable large employer member is not required to apply the same methods as other applicable large employer members of the same applicable large employer for the same or different categories of non-hourly employees, provided that in each case the categories are reasonable and consistently applied by the applicable large employer member. An employer may change the method of calculating the hours of service of non-hourly employees (or of one or more categories of non-hourly employees) for each calendar year.

(iii) *Prohibited use of equivalencies.* The number of hours of service calculated using the days-worked or weeks-worked equivalency must reflect generally the hours actually worked and the hours for which payment is made or due. An employer is not permitted to use the days-worked equivalency or the weeks-worked equivalency if the result is to substantially understate an employee's hours of service in a manner that would cause that employee not to be treated as a full-time employee, or if the result is to understate the hours of service of a substantial number of employees (even if no particular employee's hours of service are understated substantially and even if the understatement would not cause the employee to not be treated as a full-time employee). For example, as to the former, an employer may not use a days-worked equivalency in the case of an employee who generally works three 10-hour days per week, because the equivalency would substantially understate the employee's hours of service as 24 hours of service per week, which would result in the employee being treated as not a full-time employee.

(c) *Monthly measurement method*—(1) *In general.* Under the monthly measurement method, an applicable large employer member determines each employee's status as a full-time employee by counting the employee's hours of service for each calendar month. See § 54.4980H–1(a)(21) for the definition of full-time employee. This paragraph (c)(1) (except with respect to the weekly rule) applies for purposes of the determination of status as an applicable large employer; paragraphs (c)(2) through (4) of this section do not apply for purposes of the determination of status as an applicable large employer. For rules regarding the use of the look-back measurement method and the monthly measurement method for different categories of employees, see paragraph (e) of this section.

(2) *Employee first otherwise eligible for an offer of coverage.* The rule in this paragraph (c)(2) applies with respect to an employee who, in a calendar month, first becomes otherwise eligible to be offered coverage under a group health plan of an employer using the monthly measurement method with respect to that employee. For purposes of this paragraph (c)(2), an employee is otherwise eligible to be offered coverage under a group health plan for a calendar month if, pursuant to the terms of the plan as in effect for that calendar month, the employee meets all conditions to be offered coverage under the plan for that calendar month, other than the completion of a waiting period, within the meaning of § 54.9801–2, and an employee is first otherwise eligible if the employee has not previously been eligible or otherwise eligible for an offer of coverage under a group health plan of the employer during the employee's period of employment. An employer is not subject to an assessable payment under section 4980H(a) with respect to an employee for each calendar month during the period of three full calendar months beginning with the first full calendar month in which the employee is otherwise eligible for an offer of coverage under a group health plan of the employer, provided that the employee is offered coverage no later than the first day of the first calendar month immediately following the three-month period if the employee is still employed on that day. If the coverage for which the employee is otherwise eligible during the three-month period, and which the employee actually is offered on the day following that three-month period if still employed, provides minimum value, the employer also will not be subject to an assessable payment under section 4980H(b) with respect to that employee for the three-month period. This rule cannot apply more

than once per period of employment of an employee. If an employee terminates employment and returns under circumstances that would constitute a rehire as set forth in paragraph (c)(4) of this section, the rule in this paragraph (c)(2) may apply again.

(3) *Use of weekly periods.* With respect to a category of employees for whom an employer uses the monthly measurement method, an employer may determine full-time employee status for a calendar month based on hours of service over a period that:

(i) Begins on the first day of the week that includes the first day of the calendar month, provided that the period over which hours of service are measured does not include the week in which falls the last day of the calendar month (unless that week ends with the last day of the calendar month, in which case it is included); or

(ii) begins on the first day of the week immediately subsequent to the week that includes the first day of the calendar month (unless the week begins on the first day of the calendar month, in which case it is included), provided the period over which hours of service are measured includes the week in which falls the last day of the calendar month.

(4) *Employees rehired after termination of employment or resuming service after other absence*—(i) *Treatment as a new employee after a period of absence for employees of employers other than educational organizations.* Except as provided in paragraph (c)(4)(ii) of this section (related to rules for employers that are educational organizations), an employee who resumes providing services to (or is otherwise credited with an hour of service for) an applicable large employer after a period during which the individual was not credited with any hours of service may be treated as having terminated employment and having been rehired, and therefore may be treated as a new employee upon the resumption of services only if the employee did not have an hour of service for the applicable large employer for a period of at least 13 consecutive weeks immediately preceding the resumption of services. The rule set forth in this paragraph (c)(4)(i) applies solely for the purpose of determining whether the employee, upon the resumption of services, is treated as a new employee or as a continuing employee, and does not determine whether the employee is treated as a continuing full-time employee (for example, an employee on leave) or a terminated employee for some or all of the period during which no hours of service are credited.

(ii) *Treatment as a new employee after a period of absence for employees of educational organizations.* With respect to an employer that is an educational organization, an employee who resumes providing services to (or is otherwise credited with an hour of service for) an applicable large employer after a period during which the individual was not credited with any hours of service may be treated as having terminated employment and having been rehired, and therefore may be treated as a new employee upon the resumption of services, only if the employee did not have an hour of service for the applicable large employer for a period of at least 26 consecutive weeks immediately preceding the resumption of services. The rule set forth in this paragraph (c)(4)(ii) applies solely for the purpose of determining whether the employee, upon the resumption of services, is treated as a new employee or as a continuing employee, and does not determine whether the employee is treated as a continuing full-time employee (for example, an employee on leave) or a terminated employee for some or all of the period during which no hours of service are credited.

(iii) *Averaging method for special unpaid leave and employment break periods.* The averaging method for periods of special unpaid leave and employment break periods does not apply under the monthly measurement method, regardless of whether the employer is (or is not) an educational organization.

(iv) *Treatment of continuing employee.* The rule set forth in paragraph (c)(2) of this section applies to an employee treated as a continuing employee in the same way that it applies to an employee who has not experienced a period with no hours of service. A continuing employee treated as a full-time employee is treated as offered coverage upon resumption of services if the employee is offered coverage as of the first day that employee is credited with an hour of service, or, if later, as soon as administratively practicable. For this purpose, offering coverage by no later than the first day of the calendar month following resumption of services is deemed to be as soon as administratively practicable.

(v) *Rule of parity.* For purposes of determining the period after which an employee may be treated as having terminated employment and having been rehired, an applicable large employer may choose a period, measured in weeks, of at least four consecutive weeks during which the employee was not credited with any hours of service that exceeds the number of weeks of that employee's period of employment with the applicable large employer immediately preceding the period that is shorter than 13 weeks (for an employee of an educational organization employer, a period that is shorter than 26 weeks).

(vi) *International transfers.* An employer may treat an employee as having terminated employment if the employee transfers to a position at the same applicable large employer (including a different applicable large employer member that is part of the same applicable large employer) if the position is anticipated to continue indefinitely or for at least 12 months and if substantially all of the compensation will constitute income from sources without the United States (within the meaning of sections 861 through 863 and the regulations thereunder). With respect to an employee transferring from a position that was anticipated to continue indefinitely or for at least 12 months and in which substantially all of the compensation for the hours of service constitutes income from sources without the United States (within the meaning of sections 861 through 863 and the regulations thereunder) to a position at the same applicable large employer (including a different applicable large employer member that is part of the same applicable large employer) with respect to which substantially all of the compensation will constitute U.S. source income, the employer may treat that employee as a new hire to the extent consistent with the rules related to rehired employees as set forth in paragraph (c)(4) of this section.

(5) *Examples.* The following examples illustrate the rules of paragraphs (c)(1) through (4) of this section. In each example, the employer is an applicable large employer with 200 full-time employees (including FTEs) that uses the monthly measurement method to identify full-time employees and offers coverage only to employees who are full-time employees (and their dependents).

*Example 1 (Monthly measurement method—employee first otherwise eligible for an offer of coverage).* (i) *Facts.* Employer Z uses the monthly measurement method. Employer Z hires Employee A on January 1, 2016. For each calendar month in 2016, Employee A averages 20 hours of service per week and is not eligible (or otherwise eligible) for an offer of coverage under the group health plan of Employer Z. Effective

January 1, 2017, Employee A is promoted to a position that is eligible for an offer of coverage under a group health plan of Employer Z, following completion of a 90-day waiting period. For January 2017 through March 2017, Employee A meets all of the conditions for eligibility under the group health plan, other than completion of the waiting period. The coverage that would have been offered to Employee A under the terms of the plan, but for the waiting period, during those three months would have provided minimum value. Effective April 1, 2017, Employer Z offers Employee A coverage that provides minimum value. Employee A averages 40 hours of service per week for each calendar month in 2017.

(ii) *Conclusion.* Because Employer Z offers minimum value coverage to Employee A no later than the first day following the period of three full calendar months beginning with the first full calendar month in which Employee A is otherwise eligible for an offer of coverage under a group health plan of Employer Z, Employer Z is not subject to an assessable payment for January 2017 through March 2017 under section 4980H by reason of its failure to offer coverage to Employee A during those months. For calendar months after March 2017, an offer of minimum value coverage may result in an assessable payment under section 4980H(b) with respect to Employee A for any month for which the offer is not affordable and for which Employer Z has received a Section 1411 Certification. Employer Z is not subject to an assessable payment under section 4980H by reason of its failure to offer coverage to Employee A during each month of 2016 because for each month of 2016, Employee A was not a full-time employee.

*Example 2 (Rehire rules under monthly measurement method for employers that are not educational organizations).* (i) *Facts.* Same as *Example 1,* except that Employee A has zero hours of service during a nine week period of unpaid leave (that constitutes special unpaid leave) beginning on June 25, 2017, and ending on August 26, 2017. As a result of the nine week period during which Employee A has zero hours of service, Employee A averages less than 30 hours of service per week for July 2017 and August 2017. Employee A averages more than 30 hours of service per week for each month between and including September 2017 through December 2017. Employer Z does not use the rule of parity, set forth in paragraph (c)(4)(v) of this section, and Employer Z is not an educational organization.

(ii) *Conclusion.* Because Employee A resumes providing services for Employer Z after a period during which the employee was not credited with any hours of service of less than 13 consecutive weeks, Employer Z may not treat Employee A as having terminated employment and having been rehired. Therefore, Employer Z may not treat Employee A as a new employee upon the resumption of services, and, accordingly, Employer Z may not again apply the rule set forth in paragraph (c)(2) of this section. Although the nine consecutive weeks of zero hours of service constitute special unpaid leave, the averaging method for periods of special unpaid leave does not apply under the monthly measurement method. Therefore, Employer Z may treat Employee A as a non-full-time employee for July 2017 and August 2017.

*Example 3 (Use of weekly rule).* (i) *Facts.* Employer Y uses the monthly measurement method in combination with the weekly rule for purposes of determining whether an employee is a full-time employee for a particular calendar month. For purposes of applying the weekly rule, Employer Y uses the period of Sunday through Saturday as a week and includes the week that includes the first day of a calendar month and excludes the week that includes the last day of a calendar month (except in any case in which the last day of the calendar month occurs on a Saturday). Employer Y measures hours of service for the five weeks from Sunday, December 27, 2015, through Saturday, January 30, 2016, to determine an employee's full-time employee status for January 2016, for the four weeks from Sunday, January 31, 2016, through Saturday, February 27, 2016, to determine an employee's status for February 2016, and the four weeks from Sunday, February 28, 2016, through Saturday, March 26, 2016, to determine an employee's status for March 2016. For January 2016, Employer Y treats an employee as a full-time employee if the employee has at least 150 hours of service (30 hours per week × 5 weeks). For February 2016 and March 2016, Employer Y treats an employee as a full-time employee if the employee has at least 120 hours of service (30 hours per week × 4 weeks).

(ii) *Conclusion.* Employer Y has correctly applied the weekly rule as part of the monthly measurement method for determining each employee's status as a full-time employee for the months January, February, and March 2016.

(d) *Look-back measurement method*—(1) *Ongoing employees*—(i) *In general.* Under the look-back measurement method for ongoing employees, an applicable large employer determines each ongoing employee's full-time employee status by looking back at the standard measurement period. The applicable large employer member determines the months in which the standard measurement period starts and ends, provided that the determination must be made on a uniform and consistent basis for all employees in the same category (see paragraph (d)(1)(v) of this section for a list of permissible categories). For example, if an applicable large employer member chooses a standard measurement period of 12 months, the applicable large employer member could choose to make it the calendar year, a non-calendar plan year, or a different 12-month period, such as one that ends shortly before the start of the plan's annual open enrollment period. If the applicable large employer member determines that an employee was employed on average at least 30 hours of service per week during the standard measurement period, then the applicable large employer member must treat the employee as a full-time employee during a subsequent stability period, regardless of the employee's number of hours of service during the stability period, so long as he or she remains an employee.

(ii) *Use of payroll periods.* For payroll periods that are one week, two weeks, or semi-monthly in duration, an employer is permitted to treat as a measurement period a period that ends on the last day of the payroll period preceding the payroll period that includes the date that would otherwise be the last day of the measurement period, provided that the measurement period begins on the first day of the payroll period that includes the date that would otherwise be the first day of the measurement period. An employer may also treat as a measurement period a period that begins on the first day of the payroll period that follows the payroll period that includes the date that would otherwise be the first day of the measurement period, provided that the measurement period ends on the last day of the payroll period that includes the date that would otherwise be the last day of the measurement period. For example, an employer using the calendar year as a measurement period could exclude the entire payroll period that included January 1 (the beginning of the year) if it included the entire payroll period that included December 31 (the end of that same year), or, alternatively, could exclude the entire payroll period that included December 31 of a calendar year if it included the entire payroll period that included January 1 of that calendar year.

(iii) *Employee determined to be employed an average of at least 30 hours of service per week.* An employee who was employed on average at least 30 hours of service per week during the standard measurement period must be treated as a full-time employee for a stability period that begins immediately after the standard measurement period and any applicable administrative period. The stability period must be at least six consecutive calendar months but no shorter in duration than the standard measurement period.

(iv) *Employee determined not to be employed on average at least 30 hours of service per week.* If an employee was not employed an average of at least 30 hours of service per week during the standard measurement period, the applicable large employer member may treat the employee as not a full-time employee during the stability period that follows, but is not longer than, the

standard measurement period. The stability period must begin immediately after the end of the measurement period and any applicable administrative period.

(v) *Permissible employee categories.* Different applicable large employer members of the same applicable large employer may use measurement periods and stability periods that differ either in length or in their starting or ending dates. In addition, subject to the rules governing the relationship between the length of the measurement period and the stability period, applicable large employer members may use measurement periods and stability periods that differ either in length or in their starting and ending dates for—

(A) Collectively bargained employees and non-collectively bargained employees,

(B) Each group of collectively bargained employees covered by a separate collective bargaining agreement,

(C) Salaried employees and hourly employees, and

(D) Employees whose primary places of employment are in different States.

(vi) *Optional administrative period.* An applicable large employer member may provide for an administrative period that begins immediately after the end of a standard measurement period and that ends immediately before the associated stability period; however, any administrative period between the standard measurement period and the stability period for ongoing employees may neither reduce nor lengthen the measurement period or the stability period. The administrative period following the standard measurement period may last up to 90 days. To prevent this administrative period from creating a period during which coverage is not available, the administrative period must overlap with the prior stability period, so that, during any such administrative period applicable to ongoing employees following a standard measurement period, ongoing employees who are enrolled in coverage because of their status as full-time employees based on a prior measurement period must continue to be covered through the administrative period. Applicable large employer members may use administrative periods that differ in length for the categories of employees identified in paragraph (d)(1)(v) of this section.

(vii) *Change in employment status.* Except as provided in paragraph (f)(2) of this section, if an ongoing employee experiences a change in employment status before the end of a stability period, the change will not affect the application of the classification of the employee as a full-time employee (or not a full-time employee) for the remaining portion of the stability period. For example, if an ongoing employee in a certain position of employment is not treated as a full-time employee during a stability period because the employee's hours of service during the prior measurement period were insufficient for full-time-employee treatment, and the employee experiences a change in employment status that involves an increased level of hours of service, the treatment of the employee as a non-full-time employee during the remainder of the stability period is unaffected. Similarly, if an ongoing employee in a certain position of employment is treated as a full-time employee during a stability period because the employee's hours of service during the prior measurement period were sufficient for full-time-employee treatment, and the employee experiences a change in employment status that involves a lower level of hours of service, the treatment of the employee as a full-time employee during the remainder of the stability period is unaffected.

(viii) *Example.*

The following example illustrates the application of paragraph (d)(1) of this section:

(A) *Facts.* Employer Z is an applicable large employer member and computes hours of service following the rules in this paragraph (d)(1). Employer Z chooses to use a 12-month stability period that begins January 1 and a 12-month standard measurement period that begins October 15. Consistent with the terms of Employer Z's group health plan, only employees classified as full-time employees using the look-back measurement method are eligible for coverage. Employer Z chooses to use an administrative period between the end of the standard measurement period (October 14) and the beginning of the stability period (January 1) to determine which employees were employed on average 30 hours of service per week during the measurement period, notify them of their eligibility for the plan for the calendar year beginning on January 1 and of the coverage available under the plan, answer questions and collect materials from employees, and enroll those employees who elect coverage in the plan. Previously-determined full-time employees already enrolled in coverage continue to be offered coverage through the administrative period. Employee A and Employee B have been employed by Employer Z for several years, continuously from their start date. Employee A was employed on average 30 hours of service per week during the standard measurement period that begins October 15, 2015, and ends October 14, 2016, and for all prior standard measurement periods. Employee B also was employed on average 30 hours of service per week for all prior standard measurement periods, but averaged less than 30 hours of service per week during the standard measurement period that begins October 15, 2015, and ends October 14, 2016.

(B) *Conclusions.* Because Employee A was employed for the entire standard measurement period that begins October 15, 2015, and ends October 14, 2016, Employee A is an ongoing employee with respect to the stability period running from January 1, 2017, through December 31, 2017. Because Employee A was employed on average 30 hours of service per week during that standard measurement period, Employee A is offered coverage for the entire 2017 stability period (including the administrative period from October 15, 2017, through December 31, 2017). Because Employee A was employed on average 30 hours of service per week during the prior standard measurement period, Employee A is offered coverage for the entire 2016 stability period and, if enrolled, would continue such coverage during the administrative period from October 15, 2016, through December 31, 2016. Because Employee B was employed for the entire standard measurement period that begins October 15, 2015, and ends October 14, 2016, Employee B is also an ongoing employee with respect to the stability period in 2017. Because Employee B was not a full-time employee based on hours of service during this standard measurement period, Employee B is not offered coverage for the stability period in 2017 (including the administrative period from October 15, 2017, through December 31, 2017). However, because Employee B was employed on average 30 hours of service per week during the prior standard measurement period, Employee B is offered coverage through the end of the 2016 stability period and, if enrolled, would continue such coverage during the administrative period from October 15, 2016, through December 31, 2016. Employer Z complies with the standards of paragraph (d)(1) of this section because the standard measurement period is no longer than 12 months, the stability period for ongoing employees who are full-time employees based on hours of service during the standard measurement period is not shorter than the standard measurement period, the

stability period for ongoing employees who are not full-time employees based on hours of service during the standard measurement period is no longer than the standard measurement period, and the administrative period is no longer than 90 days.

(2) *New non-variable hour, new non-seasonal and new non-part-time employees*—(i) *In general.* For a new employee who is reasonably expected at the employee's start date to be a full-time employee (and is not a seasonal employee), an applicable large employer member determines such employee's status as a full-time employee based on the employee's hours of service for each calendar month. If the employee's hours of service for the calendar month equal or exceed an average of 30 hours of service per week, the employee is a full-time employee for that calendar month. Once a new employee who is reasonably expected at the employee's start date to be a full-time employee (and is not a seasonal employee) becomes an ongoing employee, the rules set forth in paragraph (d)(1) of this section apply for determining full-time employee status.

(ii) *Factors for determining full-time employee status.* Whether an employer's determination that a new employee (who is not a seasonal employee) is a full-time employee or is not a full-time employee is reasonable is based on the facts and circumstances at the employee's start date. Factors to consider in determining whether a new employee who is not a seasonal employee is reasonably expected at the employee's start date to be a full-time employee include, but are not limited to, whether the employee is replacing an employee who was (or was not) a full-time employee, the extent to which hours of service of ongoing employees in the same or comparable positions have varied above and below an average of 30 hours of service per week during recent measurement periods, and whether the job was advertised, or otherwise communicated to the new hire or otherwise documented (for example, through a contract or job description), as requiring hours of service that would average 30 (or more) hours of service per week or less than 30 hours of service per week. In all cases, no single factor is determinative. An educational organization employer cannot take into account the potential for, or likelihood of, an employment break period in determining its expectation of future hours of service.

(iii) *Application of section 4980H to initial full three calendar months of employment.* Notwithstanding paragraph (d)(2)(i) of this section, with respect to an employee who is reasonably expected at his or her start date to be a full-time employee (and is not a seasonal employee), the employer will not be subject to an assessable payment under section 4980H(a) for any calendar month of the three-month period beginning with the first day of the first full calendar month of employment if, for the calendar month, the employee is otherwise eligible for an offer of coverage under a group health plan of the employer, provided that the employee is offered coverage by the employer no later than the first day of the fourth full calendar month of employment if the employee is still employed on that day. If the offer of coverage for which the employee is otherwise eligible during the first three full calendar months of employment, and which the employee actually is offered by the first day of the fourth month if still employed, provides minimum value, the employer also will not be subject to an assessable payment under section 4980H(b) with respect to that employee for the first three full calendar months of employment. For purposes of this paragraph (d)(2)(iii), an employee is otherwise eligible to be offered coverage under a group health plan for a calendar month if, pursuant to the terms of the plan as in effect for that calendar month, the employee meets all conditions to be offered coverage under the plan for that calendar month, other than the completion of a waiting period, within the meaning of § 54.9801–2.

(3) *New variable hour employees, new seasonal employees, and new part-time employees*—(i) *In general.* For new variable hour employees, new seasonal employees, and new part-time employees, applicable large employer members are permitted to determine whether the new employee is a full-time employee using an initial measurement period of no less than three consecutive months and no more than 12 consecutive months (as selected by the applicable large employer member) that begins on the employee's start date or on any date up to and including the first day of the first calendar month following the employee's start date (or on the first day of the first payroll period starting on or after the employee's start date, if later, as set forth in paragraph (d)(3)(ii) of this section). The applicable large employer member measures the new employee's hours of service during the initial measurement period and determines whether the employee was employed on average at least 30 hours of service per week during this period. The stability period for such employees must be the same length as the stability period for ongoing employees.

(ii) *Use of payroll periods.* An applicable large employer member may apply the payroll period rule set forth in paragraph (d)(1)(ii) of this section for purposes of determining an initial measurement period, provided that the initial measurement period must begin on the start date or any date during the period beginning with the employee's start date and ending with the later of the first day of the first calendar month following the employee's start date and the first day of the first payroll period that starts after the employee's start date. As set forth in paragraph (d)(1)(ii) of this section, the use of payroll periods for purposes of determining the initial measurement period applies for payroll periods that are one week, two weeks, or semi-monthly in duration.

(iii) *Employees determined to be employed on average at least 30 hours of service per week.* If a new variable hour employee, new seasonal employee, or new part-time employee has on average at least 30 hours of service per week during the initial measurement period, the applicable large employer member must treat the employee as a full-time employee during the stability period that begins after the initial measurement period (and any associated administrative period). The stability period must be a period of at least six consecutive calendar months that is no shorter in duration than the initial measurement period. The stability period must begin immediately after the end of the measurement period and any applicable administrative period. With respect to an employee who has on average at least 30 hours of service per week during the initial measurement period, the employer will not be subject to an assessable payment under section 4980H(a) for any calendar month during the initial measurement period and any associated administrative period if, for the calendar month, the employee is otherwise eligible for an offer of coverage under a group health plan of the employer, provided that the employee is offered coverage by the employer no later than the first day of the associated stability period if the employee is still employed on that day. If the offer of coverage for which the employee is otherwise eligible during the initial measurement period, and which the employee actually is offered by the first day of the stability period if still employed, provides minimum value, the employer also will not be subject to an assessable payment under section 4980H(b) with respect to that employee during the

initial measurement period and any associated administrative period. For purposes of this paragraph (d)(3)(iii), an employee is otherwise eligible to be offered coverage under a group health plan for a month if, pursuant to the terms of the plan as in effect for that calendar month, the employee meets all conditions to be offered coverage under the plan for that month, other than the completion of a waiting period, within the meaning of § 54.9801–2.

(iv) *Employees determined not to be employed on average at least 30 hours of service per week.* If a new variable hour employee, new seasonal employee, or new part-time employee does not have on average at least 30 hours of service per week during the initial measurement period, the applicable large employer member may treat the employee as not a full-time employee during the stability period that follows the initial measurement period. Except as provided in paragraph (d)(4)(iv) of this section, the stability period for such employees must not be more than one month longer than the initial measurement period and must not exceed the remainder of the first entire standard measurement period (plus any associated administrative period) for which a variable hour employee, seasonal employee, or part-time employee has been employed. The stability period must begin immediately after the end of the measurement period and any applicable administrative period.

(v) *Permissible differences in measurement or stability periods for different categories of employees.* Subject to the rules governing the relationship between the length of the measurement period and the stability period, with respect to a new variable hour employee, new seasonal employee, or new part-time employee, applicable large employer members may use measurement periods and stability periods that differ either in length or in their starting and ending dates for the categories of employees identified in paragraph (d)(1)(v) of this section.

(vi) *Optional administrative period*—(A) *In general.* Subject to the limits in paragraph (d)(3)(vi)(B) of this section, an applicable large employer member may apply an administrative period in connection with an initial measurement period and before the start of the stability period. This administrative period must not exceed 90 days in total. For this purpose, the administrative period includes all periods between the start date of a new variable hour employee, new seasonal employee, or new part-time employee and the date the employee is first offered coverage under the applicable large employer member's group health plan, other than the initial measurement period. Thus, for example, if the applicable large employer member begins the initial measurement period on the first day of the first month following a new employee's start date, the period between the employee's start date and the first day of the next month must be taken into account in applying the 90-day limit on the administrative period. Similarly, if there is a period between the end of the initial measurement period and the date the employee is first offered coverage under the plan, that period must be taken into account in applying the 90-day limit on the administrative period. Applicable large employer members may use administrative periods that differ in length for the categories of employees identified in paragraph (d)(1)(v) of this section.

(B) *Limit on combined length of initial measurement period and administrative period.* In addition to the specific limits on the initial measurement period (which must not exceed 12 months) and the administrative period (which must not exceed 90 days), there is a limit on the combined length of the initial measurement period and the administrative period applicable to a new variable hour employee, new seasonal employee, or new part-time employee. Specifically, the initial measurement period and administrative period together cannot extend beyond the last day of the first calendar month beginning on or after the first anniversary of the employee's start date. For example, if an applicable large employer member uses a 12-month initial measurement period for a new variable hour employee, and begins that initial measurement period on the first day of the first calendar month following the employee's start date, the period between the end of the initial measurement period and the offer of coverage to a new variable hour employee who is a full-time employee based on hours of service during the initial measurement period must not exceed one month.

(vii) *Change in employment status during the initial measurement period*—(A) *In general.* If a new variable hour employee, new seasonal employee, or new part-time employee experiences a change in employment status before the end of the initial measurement period such that, if the employee had begun employment in the new position or status, the employee would have reasonably been expected to be employed on average at least 30 hours of service per week (or, if applicable, would not have been a seasonal employee and would have been expected to be employed on average at least 30 hours of service per week), the rules set forth in the remainder of this paragraph (d)(3)(vii) apply. With respect to an employee described in this paragraph (d)(3)(vii) and subject to the rules in the next sentence, the employer will not be subject to an assessable payment under section 4980H for the period before the first day of the fourth full calendar month following the change in employment status (or, if earlier and the employee averages 30 or more hours of service per week during the initial measurement period, the first day of the first month following the end of the initial measurement period (including any optional administrative period associated with the initial measurement period)). An employer will not be subject to an assessable payment under section 4980H(a) with respect to an employee described in this paragraph (d)(3)(vii) for any calendar month during the period described in the prior sentence if, for the calendar month, the employee is otherwise eligible for an offer of coverage under a group health plan of the employer, provided that the employee is offered coverage by the employer no later than the end of the period described in the prior sentence if the employee is still employed on that date; if the offer of coverage for which the employee is otherwise eligible during the period described in the prior sentence, and which the employee is actually offered by the first day after the end of that period if still employed, provides minimum value, the employer also will not be subject to an assessable payment under section 4980H(b) with respect to that employee during that period. For purposes of this paragraph (d)(3)(vii), an employee is otherwise eligible to be offered coverage under a group health plan for a calendar month if, pursuant to the terms of the plan as in effect for that calendar month, the employee meets all conditions to be offered coverage under the plan for that calendar month, other than the completion of a waiting period, within the meaning of § 54.9801–2.

(B) *Example.* The following example illustrates the provisions of paragraph (d)(3)(vii) of this section. In the following example, the applicable large employer member has 200 full-time employees and offers all of its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan. The coverage is affordable within the meaning of

section 36B(c)(2)(C)(i) (or is treated as affordable under one of the affordability safe harbors described in § 54.4980H–5) and provides minimum value.

*Example (Change in employment status from variable hour employee to full-time employee).* (i) *Facts.* For new variable hour employees, Employer Z uses a 12-month initial measurement period that begins on the start date and applies an administrative period from the end of the initial measurement period through the end of the first calendar month beginning on or after the end of the initial measurement period. For new variable hour employees, Employer Z offers coverage no later than the first day of the fourteenth month after the start date if an employee averages 30 or more hours of service per week during the initial measurement period. Employer Z hires Employee A on May 10, 2015. Employee A's initial measurement period runs from May 10, 2015, through May 9, 2016, with the optional administrative period ending June 30, 2016. At Employee A's May 10, 2015, start date, Employee A is a variable hour employee. On September 15, 2015, Employer Z promotes Employee A to a position that can reasonably be expected to average at least 30 hours of service per week. For October 2015 through December 2015, Employee A is otherwise eligible for an offer of coverage that provides minimum value, and, on January 1, 2016, Employee A is offered coverage by the employer that provides minimum value.

(ii) *Conclusion.* Employer Z will not be subject to an assessable payment under section 4980H(a) with respect to Employee A for October 2015, November 2015, or December 2015, because for each of those months Employee A is otherwise eligible for an offer of coverage and because Employee A is offered coverage by January 1, 2016 (the date that is the earlier of the first day of the fourth calendar month following the change in employment status (January 1, 2016) or the first day of the calendar month after the end of the initial measurement period plus the optional administrative period (July 1, 2016)). Because the coverage offered on January 1, 2016, provides minimum value, Employer Z also will not be subject to an assessable payment under section 4980H(b) with respect to Employee A for October 2015, November 2015, or December 2015.

(4) *Transition from new variable hour employee, new seasonal employee, or new part-time employee to ongoing employee*—(i) *In general.* Once a new variable hour employee, new seasonal employee, or new part-time employee has been employed for an entire standard measurement period, the applicable large employer member must test the employee for full-time employee status, beginning with that standard measurement period, at the same time and under the same conditions as apply to other ongoing employees. Accordingly, for example, an applicable large employer member with a calendar year standard measurement period that also uses a one-year initial measurement period beginning on the employee's start date would test a new employee whose start date is April 12 for full-time employee status first based on the initial measurement period (April 12 of the year including the start date through April 11 of the following year) and again based on the calendar year standard measurement period (if the employee continues in employment for that entire standard measurement period) beginning on January 1 of the year after the start date.

(ii) *Employee determined to be employed an average of at least 30 hours of service per week.* An employee who was employed an average of at least 30 hours of service per week during an initial measurement period or standard measurement period must be treated as a full-time employee for the entire associated stability period. This is the case even if the employee was employed an average of at least 30 hours of service per week during the initial measurement period but was not employed an average of at least 30 hours of service per week during the overlapping or immediately following standard measurement period. In that case, the applicable large employer member may treat the employee as not a full-time employee only after the end of the stability period associated with the initial measurement period. Thereafter, the applicable large employer member must determine the employee's status as a full-time employee in the same manner as it determines such status in the case of its other ongoing employees as described in paragraph (d)(1) of this section.

(iii) *Employee determined not to be employed an average of at least 30 hours of service per week.* If the employee was not employed an average of at least 30 hours of service per week during the initial measurement period, but was employed at least 30 hours of service per week during the overlapping or immediately following standard measurement period, the employee must be treated as a full-time employee for the entire stability period that corresponds to that standard measurement period (even if that stability period begins before the end of the stability period associated with the initial measurement period). Thereafter, the applicable large employer member must determine the employee's status as a full-time employee in the same manner as it determines such status in the case of its other ongoing employees as described in paragraph (d)(1) of this section.

(iv) *Treatment during periods between stability periods.* If there is a period between the end of the stability period associated with the initial measurement period and the beginning of the stability period associated with the first full standard measurement period during which an employee is employed, the treatment as a full-time employee or not a full-time employee that applies during the stability period associated with the initial measurement period continues to apply until the beginning of the stability period associated with the first full standard measurement period during which the employee is employed.

(5) *Examples.* The following examples illustrate the look-back measurement methods described in paragraphs (d)(1), (d)(3) and (d)(4) of this section. In all of the following examples, the applicable large employer member has 200 full-time employees and offers all of its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan. The coverage is affordable within the meaning of section 36B(c)(2)(C)(i) (or is treated as affordable coverage under one of the affordability safe harbors described in § 54.4980H–5) and provides minimum value. In *Example 1* through *Example 8,* the new employee is a new variable hour employee, and the employer has chosen to use a 12-month standard measurement period for ongoing employees starting October 15 and a 12-month stability period associated with that standard measurement period starting January 1. (Thus, during the administrative period from October 15 through December 31 of each calendar year, the employer continues to offer coverage to employees who qualified for coverage for that entire calendar year based upon having an average of at least 30 hours of service per week during the prior standard measurement period.) In *Example 9* and *Example 10,* the new employee is a new variable hour employee, and the employer uses a six-month standard measurement period, starting each May 1 and November 1, with six-month stability periods associated with those standard measurement periods starting January 1 and July 1. In *Example 12, Example 13,* and *Example 14,* the employer is in the trade or business of providing temporary workers to numerous clients that are unrelated to the employer and to one another; the employer is the common law employer of the temporary workers based on all of the facts and circumstances; the employer offers health plan coverage only to full-time employees (including temporary workers who are full-time employees) and their dependents; and the employer uses a 12-month initial measurement

period for new variable hour employees that begins on the start date and applies an administrative period from the end of the initial measurement period through the end of the first calendar month beginning after the end of the initial measurement period.

*Example 1 (12-Month initial measurement period followed by 1+ partial month administrative period).* (i) *Facts.* For new variable hour employees, Employer Z uses a 12-month initial measurement period that begins on the start date and applies an administrative period from the end of the initial measurement period through the end of the first calendar month beginning on or after the end of the initial measurement period. Employer Z hires Employee A on May 10, 2015. Employee A's initial measurement period runs from May 10, 2015, through May 9, 2016. Employee A has an average of 30 hours of service per week during this initial measurement period. Employer Z offers coverage that provides minimum value to Employee A for a stability period that runs from July 1, 2016, through June 30, 2017. For each calendar month during the period beginning with June 2015 and ending with June 2016, Employee A is otherwise eligible for an offer of coverage with respect to the coverage that is offered to Employee A on July 1, 2016.

(ii) *Conclusion.* Employer Z uses an initial measurement period that does not exceed 12 months; an administrative period totaling not more than 90 days; and a combined initial measurement period and administrative period that does not last beyond the final day of the first calendar month beginning on or after the one-year anniversary of Employee A's start date. Accordingly, Employer Z complies with the standards for the initial measurement period and stability periods for a new variable hour employee. Employer Z will not be subject to an assessable payment under section 4980H(a) with respect to Employee A for any calendar month from June 2015 through June 2016 because, for each month during that period, Employee A is otherwise eligible for an offer of coverage and because coverage is offered no later than the end of the initial measurement period plus the associated administrative period (July 1, 2016). Employer Z will not be subject to an assessable payment under section 4980H(b) with respect to Employee A for any calendar month from June 2015 through June 2016 because the coverage Employer Z offers to Employee A provides minimum value. Employer Z will not be subject to an assessable payment under section 4980H(a) or (b) with respect to Employee A for May 2015 because an applicable large employer member is not subject to an assessable payment under section 4980H with respect to an employee for the calendar month in which falls the employee's start date if the start date is on a date other than the first day of the calendar month. Employer Z must test Employee A again based on the period from October 15, 2015, through October 14, 2016 (Employer Z's first standard measurement period that begins after Employee A's start date).

*Example 2 (11-Month initial measurement period followed by 2+ partial month administrative period).* (i) *Facts.* Same as *Example 1,* except that Employer Z uses an 11-month initial measurement period that begins on the start date and applies an administrative period from the end of the initial measurement period until the end of the second calendar month beginning after the end of the initial measurement period. Employee A's initial measurement period runs from May 10, 2015, through April 9, 2016. The administrative period associated with Employee A's initial measurement period ends on June 30, 2016. Employee A has an average of 30 hours of service per week during this initial measurement period.

(ii) *Conclusion.* Same as *Example 1.*

*Example 3 (11-Month initial measurement period preceded by partial month administrative period and followed by 2-month administrative period).* (i) *Facts.* Same as *Example 1,* except that Employer Z uses an 11-month initial measurement period that begins on the first day of the first calendar month beginning after the start date and applies an administrative period that runs from the end of the initial measurement period through the end of the second calendar month beginning on or after the end of the initial measurement period. Employee A's initial measurement period runs from June 1, 2015, through April 30, 2016. The administrative period associated with Employee A's initial measurement period ends on June 30, 2016. Employee A has an average of 30 hours of service per week during this initial measurement period.

(ii) *Conclusion.* Same as *Example 1.*

*Example 4 (12-Month initial measurement period preceded by partial month administrative period and followed by 2-month administrative period).* (i) *Facts.* For new variable hour employees, Employer Z uses a 12-month initial measurement period that begins on the first day of the first month following the start date and applies an administrative period that runs from the end of the initial measurement period through the end of the second calendar month beginning on or after the end of the initial measurement period. Employer Z hires Employee A on May 10, 2015. Employee A's initial measurement period runs from June 1, 2015, through May 31, 2016. Employee A has an average of 30 hours of service per week during this initial measurement period. Employer Z offers coverage to Employee A for a stability period that runs from August 1, 2016, through July 31, 2017.

(ii) *Conclusion.* Employer Z does not satisfy the standards for the look-back measurement method in paragraph (d)(3)(vi)(B) of this section because the combination of the initial partial month delay, the 12-month initial measurement period, and the two month administrative period means that the coverage offered to Employee A does not become effective until after the first day of the second calendar month following the first anniversary of Employee A's start date. Accordingly, Employer Z is potentially subject to an assessable payment under section 4980H for each full calendar month during the initial measurement period and associated administrative period.

*Example 5 (Continuous full-time employee).* (i) *Facts.* Same as *Example 1;* in addition, Employer Z tests Employee A again based on Employee A's hours of service from October 15, 2015, through October 14, 2016 (Employer Z's first standard measurement period that begins after Employee A's start date), determines that Employee A has an average of 30 hours of service per week during that period, and offers Employee A coverage for July 1, 2017, through December 31, 2017. (Employee A already has an offer of coverage for the period of January 1, 2017, through June 30, 2017, because that period is covered by the initial stability period following the initial measurement period, during which Employee A was determined to be a full-time employee.)

(ii) *Conclusion.* Employer Z is not subject to any payment under section 4980H for any calendar month during 2017 with respect to Employee A.

*Example 6 (Initially full-time employee, becomes non-full-time employee).* (i) *Facts.* Same as *Example 1;* in addition, Employer Z tests Employee A again based on Employee A's hours of service from October 15, 2015, through October 14, 2016 (Employer Z's first standard measurement period that begins after Employee A's start date), and determines that Employee A has an average of 28 hours of service per week during that period. Employer Z continues to offer coverage to Employee A through June 30, 2017 (the end of the stability period based on the initial measurement period during which Employee A was determined to be a full-time employee), but does not offer coverage to Employee A for the period of July 1, 2017, through December 31, 2017.

(ii) *Conclusion.* Employer Z is not subject to any payment under section 4980H for any calendar month during 2017 with respect to Employee A.

*Example 7 (Initially non-full-time employee).* (i) *Facts.* Same as *Example 1,* except that Employee A has an average of 28 hours of service per week during the initial measurement period (May 10, 2015, through May 9, 2016), and Employer Z does not offer coverage to Employee A for any calendar month in 2016.

(ii) *Conclusion.* From Employee A's start date through the end of 2016, Employer Z is not subject to any payment under section 4980H with respect to Employee A, because Employer Z complies with the standards for the measurement and stability periods for a new variable hour employee with respect to Employee A and because under those standards, Employee A is not a full-time employee for any month during 2016.

*Example 8 (Initially non-full-time employee, becomes full-time employee).* (i) *Facts.* Same as *Example 7;* in addition, Employer Z tests Employee A again based on Employee A's hours of service from October 15, 2015, through October 14, 2016 (Employer Z's first standard measurement period that begins after Employee A's start date), determines that Employee A has an average of 30 hours of service per week during this standard measurement period, and offers coverage to Employee A for 2017.

(ii) *Conclusion.* Employer Z is not subject to any payment under section 4980H for any calendar month during 2017 with respect to Employee A.

*Example 9 (Initially full-time employee).* (i) *Facts.* For new variable hour employees, Employer Y uses a six-month initial measurement period that begins on the start date and applies an administrative period that runs from the end of the initial measurement period through the end of the first full calendar month beginning after the end of the initial measurement period. Employer Y hires Employee B on May 10, 2015. Employee B's initial measurement period runs from May 10, 2015, through November 9, 2015, during which Employee B has an average of 30 hours of service per week. Employer Y offers coverage that provides minimum value to Employee B for a stability period that runs from January 1, 2016, through June 30, 2016. For each calendar month during the period from June 2015 through December 2015, Employee B is otherwise eligible for an offer of coverage with respect to the coverage that is offered to Employee B on January 1, 2016.

(ii) *Conclusion.* Employer Y uses an initial measurement period that does not exceed 12 months; an administrative period totaling not more than 90 days; and a combined initial measurement period and administrative period that does not extend beyond the final day of the first calendar month beginning on or after the one-year anniversary of Employee B's start date. Employer Y complies with the standards for the measurement and stability periods for a new variable hour employee with respect to Employee B. Employer Y is not subject to an assessable payment under section 4980H(a) with respect to Employee B for any calendar month from June 2015 through December 2015 because, for each month during that period, Employee B is otherwise eligible for an offer of coverage and because Employee B is offered coverage no later than the end of the initial measurement period plus the associated administrative period (January 1, 2016). Employer Y is not subject to an assessable payment under section 4980H(b) with respect to Employee B for any calendar month from June 2015 through December 2015 because the coverage Employer Y offers to Employee B no later than January 1, 2016, provides minimum value. Employer Y is not subject to an assessable payment under section 4980H(a) or (b) with respect to Employee B for May 2015 because an applicable large employer member is not subject to an assessable payment under section 4980H with respect to an employee for the calendar month in which falls the employee's start date if the start date is on a date other than the first day of the calendar month. Employer Y must test Employee B again based on Employee B's hours of service during the period from November 1, 2015, through April 30, 2016 (Employer Y's first standard measurement period that begins after Employee B's start date).

*Example 10 (Initially full-time employee, becomes non-full-time employee).* (i) *Facts.* Same as *Example 9;* in addition, Employer Y tests Employee B again based on Employee B's hours of service during the period from November 1, 2015, through April 30, 2016 (Employer Y's first standard measurement period that begins after Employee B's start date), during which period Employee B has an average of 28 hours of service per week. Employer Y continues to offer coverage to Employee B through June 30, 2016 (the end of the initial stability period based on the initial measurement period during which Employee B has an average of 30 hours of service per week), but does not offer coverage to Employee B from July 1, 2016, through December 31, 2016.

(ii) *Conclusion.* Employer Y is not subject to any payment under section 4980H with respect to Employee B for any calendar month during 2016.

*Example 11 (Seasonal employee, 12-month initial measurement period; 1+ partial month administrative period).* (i) *Facts.* Employer X offers health plan coverage only to full-time employees (and their dependents). Employer X uses a 12-month initial measurement period for new seasonal employees that begins on the start date and applies an administrative period from the end of the initial measurement period through the end of the first calendar month beginning after the end of the initial measurement period. Employer X hires Employee C, a ski instructor, on November 15, 2015, with an anticipated season during which Employee C will work running through March 15, 2016. Employee C's initial measurement period runs from November 15, 2015, through November 14, 2016.

(ii) *Conclusion.* Employer X determines that Employee C is a seasonal employee because Employee C is hired into a position for which the customary annual employment is six months or less. Accordingly, Employer X may treat Employee C as a seasonal employee during the initial measurement period.

*Example 12 (Variable hour employee; temporary staffing firm).* (i) *Facts.* Employer W hires Employee D on January 1, 2015, in a position under which Employer W will offer assignments to Employee D to provide services in temporary placements at clients of Employer W, and employees of Employer W in the same position as Employee D, as part of their continuing employment, retain the right to reject an offer of placement. Employees of Employer W in the same position of employment as Employee D typically perform services for a particular client for 40 hours of service per week for a period of less than 13 weeks, and for each employee there are typically periods in a calendar year during which Employer W does not have an assignment to offer the employee. At the time Employee D is hired by Employer W, Employer W has no reason to anticipate that Employee D's position of employment will differ from the typical employee in the same position.

(ii) *Conclusion.* Employer W cannot determine whether Employee D is reasonably expected to average at least 30 hours of service per week for the 12-month initial measurement period. Accordingly, Employer W may treat Employee D as a variable hour employee during the initial measurement period.

*Example 13 (Variable hour employee; temporary staffing firm).* (i) *Facts.* Employer V hires Employee E on January 1, 2015, in a position under which Employer V will offer assignments to Employee E to provide services in temporary placements at clients of Employer V. Employees of Employer V in the same position of employment as Employee E typically are offered assignments of varying hours of service per week (so that some weeks of the assignment typically result in more than 30 hours of service per week and other weeks of the assignment typically result in less than 30 hours of service per week). Although a typical employee in the same position of employment as Employee E rarely fails to have an offer of an assignment for any period during the calendar year, employees of Employer V in the same position of employment, as part of their continuing employment, retain the right to reject an offer of placement, and typically refuse one or more offers of placement and do not perform services for periods ranging from four to twelve weeks during a calendar year. At the time Employee E is hired by Employer V, Employer V has no reason to anticipate that Employee E's position of employment will differ from the typical employee in the same position.

(ii) *Conclusion.* Employer V cannot determine whether Employee E is reasonably expected to average at least 30 hours of service per week for the 12-month initial measurement period. Accordingly, Employer V may treat Employee E as a variable hour employee during the initial measurement period.

*Example 14 (Variable hour employee; temporary staffing firm).* (i) *Facts.* Employer T hires Employee F on January 1, 2015, in a position under which Employer T will offer assignments to Employee F to provide services in temporary placements at clients of Employer T. Employees of Employer T in the same position typically are offered assignments of 40 or more hours of service per week for periods expected to last for periods of three months to 12 months, subject to a request for renewal by the client. Employees of Employer T in similar positions to Employee F are typically offered and take new positions immediately upon cessation of a placement. At the time Employee F is hired by Employer T, Employer T has no reason to anticipate that Employee F's position of employment will differ from the typical employee in the same position.

(ii) *Conclusion.* Employer T must assume that Employee F will be employed by Employer T and available for an offer of temporary placement for the entire initial measurement period. Under that assumption, Employer T would reasonably determine that Employee F is reasonably expected to average at least 30 hours of service per week for the 12-month initial measurement period. Accordingly, Employer T may not treat Employee F as a variable hour employee during the initial measurement period.

*Example 15 (Variable hour employee).* (i) *Facts.* Employee G is hired on an hourly basis by Employer S to fill in for employees who are absent and to provide additional staffing at peak times. Employer S expects that Employee G will average 30 hours of service per week or more for Employee G's first few months of employment, while assigned to a specific project, but also reasonably expects that the assignments will be of unpredictable

duration, that there will be periods of unpredictable duration between assignments, that the hours per week required by subsequent assignments will vary, and that Employee G will not necessarily be available for all assignments.

(ii) *Conclusion.* Employer S cannot determine whether Employee G is reasonably expected to average at least 30 hours of service per week for the initial measurement period. Accordingly, Employer S may treat Employee G as a variable hour employee during the initial measurement period.

*Example 16 (Period between initial stability period and standard stability period).* (i) *Facts.* Employer R uses an 11-month initial measurement period for new variable hour, new seasonal, and new part-time employees with an administrative period that lasts from the end of the initial measurement period through the last day of the first calendar month beginning on or after the first anniversary of the employee's start date. Employer R uses a standard measurement period of October 15 through October 14, and an administrative period of October 15 through December 31. Employee H is hired as a variable hour employee on October 20, 2015, with an initial measurement period of October 20, 2015, through September 19, 2016, and an administrative period lasting through November 30, 2016. Employee H is a full-time employee based on the hours of service in the initial measurement period, and Employee H's stability period for the initial measurement period is December 1, 2016, through November 30, 2017. Employee H's first full standard measurement period begins on October 15, 2016, with an associated stability period beginning on January 1, 2018. The standard measurement period beginning on October 15, 2015, does not apply to Employee H because Employee H is not hired until October 20, 2015.

(ii) *Conclusion.* For the period after the stability period associated with the initial measurement period and before the stability period associated with Employee H's first full standard measurement period (that is December 1, 2017, through December 31, 2017), Employer R must treat Employee H as a full-time employee because the treatment as a full-time employee (or not a full-time employee) that applies during the stability period associated with the initial measurement period continues to apply until the beginning of the stability period associated with the first full standard measurement period during which the employee is employed.

(6) *Employees rehired after termination of employment or resuming service after other absence*—(i) *Treatment as a new employee after a period of absence for employees of employers other than educational organizations*—(A) *In general.* The rules in this paragraph (d)(6)(i) apply to employers that are not educational organizations. For rules relating to employers that are educational organizations, see paragraph (d)(6)(ii) of this section. An employee who resumes providing services to (or is otherwise credited with an hour of service for) an applicable large employer that is not an educational organization after a period during which the employee was not credited with any hours of service may be treated as having terminated employment and having been rehired, and therefore may be treated as a new employee upon the resumption of services, only if the employee did not have an hour of service for the applicable large employer for a period of at least 13 consecutive weeks immediately preceding the resumption of services. The rule set forth in this paragraph (d)(6)(i) applies solely for the purpose of determining whether the employee, upon the resumption of services, is treated as a new employee or as a continuing employee, and does not determine whether the employee is treated as a continuing full-time employee or a terminated employee during the period during which no hours of service are credited.

(B) *Averaging method for special unpaid leave.* For purposes of applying the look-back measurement method described in paragraph (d) of this section to an employee who is not treated as a new employee under paragraph (d)(6)(i) of this section, the employer determines the employee's average hours of service for a measurement period by computing the average after excluding any special unpaid leave during that measurement period and by using that average as the average for the entire measurement period. Alternatively, for purposes of determining the employee's average hours of service for the measurement period, the employer may choose to treat the employee as credited with hours of service for any periods of special unpaid leave during that measurement period at a rate equal to the average weekly rate at which the employee was credited with hours of service during the weeks in the measurement period that are not part of a period of special unpaid leave. There is no limit on the number of hours of service required to be excluded or credited (as the case may be) with respect to special unpaid leave. For purposes of this paragraph (d)(6)(i)(B), in computing the average weekly rate, employers are permitted to use any reasonable method if applied on a consistent basis. In addition, if an employee's average weekly rate under this paragraph (d)(6)(i)(B) is computed for a measurement period and that measurement period is shorter than six months, the six-month period ending with the close of the measurement period is used to compute the average hours of service.

(C) *Averaging rules for employment break periods for employers other than educational organizations.* The averaging rule for employment break periods described in paragraph (d)(6)(ii)(B) of this section applies only to educational organizations and does not apply to other employers.

(ii) *Treatment as a new employee after a period of absence for employees of employers that are educational organizations*—(A) *In general.* The rules of this paragraph (d)(6)(ii) apply only to employers that are educational institutions. An employee who resumes providing services to (or is otherwise credited with an hour of service for) an applicable large employer that is an educational organization after a period during which the employee was not credited with any hours of service may be treated as having terminated employment and having been rehired, and therefore may be treated as a new employee upon the resumption of services, only if the employee did not have an hour of service for the applicable large employer for a period of at least 26 consecutive weeks immediately preceding the resumption of services. The rule set forth in this paragraph (d)(6)(ii)(A) applies solely for the purpose of determining whether the employee, upon the resumption of services, is treated as a new employee or as a continuing employee, and does not determine whether the employee is treated as a continuing full-time employee or a terminated employee during the period during which no hours of service are credited.

(B) *Averaging method for special unpaid leave and employment break periods.* For purposes of applying the look-back measurement method described in paragraph (d) of this section to an employee who is not treated as a new employee under paragraph (d)(6)(ii)(A) of this section, an educational organization employer determines the employee's average hours of service for a measurement period by computing the average after excluding any special unpaid leave and any employment break period during that measurement period and by using that average as the average for the entire measurement period. Alternatively, for purposes of determining the employee's average hours of service for the measurement period, the employer may choose to treat the employee as credited with hours of service for any periods of special unpaid leave and any employment break period during that measurement period at a rate equal to the average weekly rate at which the

employee was credited with hours of service during the weeks in the measurement period that are not part of a period of special unpaid leave or an employment break period. Notwithstanding the preceding two sentences, no more than 501 hours of service during employment break periods in a calendar year are required to be excluded (under the first sentence) or credited (under the second sentence) by an educational organization, provided that this 501-hour limit does not apply to hours of service required to be excluded or credited in respect of special unpaid leave. In applying the preceding sentence, an employer that uses the method described in the first sentence of this paragraph (d)(6)(ii)(B) determines the number of hours excluded by multiplying the average weekly rate for the measurement period (determined as in the second sentence of this paragraph (d)(6)(ii)(B)) by the number of weeks in the employment break period. For purposes of this paragraph (d)(6)(ii)(B), in computing the average weekly rate, employers are permitted to use any reasonable method if applied on a consistent basis. In addition, if an employee's average weekly rate under this paragraph (d)(6)(ii)(B) is being computed for a measurement period and that measurement period is shorter than six months, the six-month period ending with the close of the measurement period is used to compute the average hours of service.

(iii) *Treatment of continuing employee.* Under the look-back measurement method, an employee treated as a continuing employee retains, upon resumption of services, the status that employee had with respect to the application of any stability period (for example, if the continuing employee returns during a stability period in which the employee is treated as a full-time employee, the employee is treated as a full-time employee upon return and through the end of that stability period). For purposes of the preceding sentence, a continuing employee treated as a full-time employee is treated as offered coverage upon resumption of services if the employee is offered coverage as of the first day that employee is credited with an hour of service, or, if later, as soon as administratively practicable. For this purpose, offering coverage by no later than the first day of the calendar month following resumption of services is deemed to be as soon as administratively practicable. If a continuing employee returns during a stability period in which the employee is treated as a full-time employee and the employer previously made the employee an offer of coverage with respect to the entire stability period and the employee declined the offer, the employer will continue to be treated as having offered coverage for that stability period and the employer need not make a new offer of coverage for the remainder of the ongoing stability period due to the employee's resumption of services.

(iv) *Rule of parity.* For purposes of determining the period after which an employee may be treated as having terminated employment and having been rehired, an applicable large employer may choose a period, measured in weeks, of at least four consecutive weeks during which the employee was not credited with any hours of service that exceeds the number of weeks of that employee's period of employment with the applicable large employer immediately preceding the period and that is shorter than 13 weeks (for an employee of an educational organization employer, a period that is shorter than 26 weeks). For purposes of the preceding sentence, the duration of the immediately preceding period of employment is determined after application to that period of employment of the averaging methods described in paragraphs (d)(6)(i)(B) and (d)(6)(ii)(B) of this section (relating to employment break periods and special unpaid leave), if applicable.

(v) *International transfers.* An employer may treat an employee as having terminated employment if the employee transfers to a position at the same applicable large employer (including a different applicable large employer member that is part of the same applicable large employer) if the position is anticipated to continue indefinitely or for at least 12 months and if substantially all of the compensation will constitute income from sources without the United States (within the meaning of sections 861 through 863 and the regulations thereunder). With respect to an employee transferring from a position that was anticipated to continue indefinitely or for at least 12 months and in which substantially all of the compensation for the hours of service constitutes income from sources without the United States (within the meaning of sections 861 through 863 and the regulations thereunder) to a position at the same applicable large employer (including a different applicable large employer member that is part of the same applicable large employer) with respect to which substantially all of the compensation will constitute U.S. source income, the employer may treat that employee as a new hire to the extent consistent with the rules related to rehired employees in paragraph (d)(6) of this section.

(vi) *Anti-abuse rule.* For purposes of this paragraph (d)(6), any hour of service is disregarded if the hour of service is credited, or the services giving rise to the crediting of the hour of service are requested or required of the employee, for a purpose of avoiding or undermining the application of the employee rehire rules under paragraph (d)(6) of this section, or the application of the averaging method for employment break periods under paragraph (d)(6)(ii)(B) of this section. For example, if an employee of an educational organization would otherwise have a period with no hours of service to which the rules under paragraph (d)(6)(ii)(B) of this section would apply, but for the employer's request or requirement that the employee perform one or more hours of service for a purpose of avoiding the application of those rules, any such hours of service for the week are disregarded, and the rules under paragraph (d)(6)(ii)(B) of this section will apply.

(vii) *Examples.* The following examples illustrate the provisions of paragraph (d)(6) of this section. All employers in these examples are applicable large employer members with 200 full-time employees (including full-time equivalent employees), each is in a different applicable large employer group, and each determines full-time employee status under the look-back measurement method. None of the periods during which an employee is not credited with an hour of service for an employer involve special unpaid leave or the employee being credited with hours of service for any applicable large employer member in the same applicable large employer as the employer.

*Example 1.* (i) *Facts.* As of April 1, 2015, Employee A has been an employee of Employer Z (which is not an educational organization) for 10 years. On April 1, 2015, Employee A terminates employment and is not credited with an hour of service until June 1, 2015, when Employer Z rehires Employee A and Employee A continues as an employee through December 31, 2015, which is the close of the measurement period as applied by Employer Z.

(ii) *Conclusion.* Because the period for which Employee A is not credited with any hours of service is not longer than Employee A's prior period of employment and is less than 13 weeks, Employee A is not treated as having terminated employment and been rehired for purposes of determining whether Employee A is treated as a new employee

upon resumption of services. Therefore, Employee A's hours of service prior to termination are required to be taken into account for purposes of the measurement period, and Employee A's period with no hours of service is taken into account as a period of zero hours of service during the measurement period.

*Example 2.* (i) *Facts.* Same facts as *Example 1,* except that Employee A is rehired on December 1, 2015.

(ii) *Conclusion.* Because the period during which Employee A is not credited with an hour of service for Employer Z exceeds 13 weeks, Employee A is treated as having terminated employment on April 1, 2015, and having been rehired as a new employee on December 1, 2015, for purposes of determining Employee A's full-time employee status. Because Employee A is treated as a new employee, Employee A's hours of service prior to termination are not taken into account for purposes of the measurement period, and the period between termination and rehire with no hours of service is not taken into account in the new measurement period that begins after the employee is rehired.

*Example 3.* (i) *Facts.* Employee B is employed by Employer Y, an educational organization. Employee B is employed for 38 hours of service per week on average from September 7, 2014, through May 23, 2015, and then does not provide services (and is not otherwise credited with an hour of service) during the summer break when the school is generally not in session. Employee B resumes providing services for Employer Y on September 7, 2015, when the new school year begins.

(ii) *Conclusion.* Because the period from May 24, 2015 through September 5, 2015 (a total of 15 weeks), during which Employee B is not credited with an hour of service does not exceed 26 weeks, and also does not exceed the number of weeks of Employee B's immediately preceding period of employment, Employee B is not treated as having terminated employment on May 24, 2015, and having been rehired on September 6, 2015. Also, for purposes of determining Employee B's average hours of service per week for the measurement period, Employee B is credited, under the averaging method for employment break periods applicable to educational organizations, as having an average of 38 hours of service per week for the 15 weeks between May 24, 2015 and September 5, 2015, during which Employee B otherwise was credited with no hours of service. However, Employer Y is not required to credit more than 501 hours of service for the employment break period (15 weeks × 38 hours = 570 hours).

*Example 4.* (i) *Facts.* Same facts as *Example 3,* except that Employee B does not resume providing services for Employer Y until December 5, 2015.

(ii) *Conclusion.* Because the period from May 24, 2015 through December 5, 2015, exceeds 26 weeks, Employee B may be treated as having terminated employment on May 24, 2015, and having been rehired on December 5, 2015. Because Employee B is treated as a new employee on December 5, 2015, Employee B's hours of service prior to termination are not taken into account for purposes of the measurement period, and the period between termination and rehire with no hours of service is not taken into account in the new measurement period that begins after Employee B is rehired. The averaging method for employment break periods applicable to educational organizations does not apply because Employee B is treated as a new employee rather than a continuing employee as of the date of resumption of services.

(e) *Use of the look-back measurement method and the monthly measurement method for different categories of employees.* Different applicable large employer members of the same applicable large employer may use different methods of determining full-time employee status (that is, either the monthly measurement method or the look-back measurement method). In addition, an applicable large employer member may use either the monthly measurement method or the look-back measurement method for each of the categories of employees set forth in paragraphs (d)(1)(v) and (d)(3)(v) of this section, and is not required to use the same method for all categories.

(f) *Changes in employment status resulting in a change in full-time employee determination method*—(1) *Change in employment status from a position to which a look-back measurement method applies to a position to which the monthly measurement method applies, or vice versa*—(i) *Change from look-back measurement method to monthly measurement method.* For an employee transferring from a position under which the look-back measurement method is used to determine the employee's status as a full-time employee, to a position under which the monthly measurement method is used to determine the employee's status as a full-time employee, the following rules apply:

(A) For an employee who at the time of the change of position is in a stability period under which the employee is treated as a full-time employee, the employer must continue to treat the employee as a full-time employee through the end of the stability period;

(B) For an employee who at the time of the change of position is in a stability period under which the employee is not treated as a full-time employee, the employer may continue to treat the employee as not a full-time employee through the end of the stability period, or may apply the monthly measurement method set forth in paragraph (c) of this section through the end of the stability period beginning with any calendar month including the calendar month in which the change in employment status occurs or any subsequent calendar month;

(C) For the stability period associated with the measurement period during which the change in employment status occurs, the employer must treat the employee as a full-time employee for any calendar month during which the employee either would be treated as a full-time employee under the stability period that would have applied based on the measurement period in which the change in employment status occurred or would be treated as a full-time employee under the monthly measurement method; and

(D) For any calendar month subsequent to the stability period identified in paragraph (f)(1)(i)(C) of this section, the monthly measurement method applies for determination of the employee's status as a full-time employee.

(ii) *Change from monthly measurement method to look-back measurement method.* For an employee who is transferring from a position under which the monthly measurement method is used to determine the employee's status as a full-time employee, to a position under which a look-back measurement method is used to determine the employee's status as a full-time employee, the following rules apply:

(A) For the remainder of the applicable stability period during which the change in employment status occurs, the employer must continue to use the monthly measurement method to determine the employee's status as a full-time employee unless the employee's hours of service prior to the change in employment status would have resulted in the employee being treated as a full-time employee during the stability period in which the change in employment status occurs, in which case the employer must treat the employee as a full-time employee for that stability period;

(B) For the applicable stability period following the measurement period during which the change in employment status occurs, the employer must treat the employee as a full-time employee for any calendar month during which the employee either would be treated as a full-time employee based on the measurement period during which the change in employment status occurs or would be treated as a full-time employee under the monthly measurement method; and

(C) For any calendar month subsequent to the stability period identified in paragraph (f)(1)(ii)(B) of this section, the look-back measurement

method applies for determination of the employee's status as a full-time employee.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (f). In each example, the employer is an applicable large employer with 200 full-time employees (including FTEs). For each example, the employer uses the monthly measurement method for determining whether a salaried employee is a full-time employee, and the look-back measurement method for determining whether an hourly employee is a full-time employee with a measurement period from October 15 through October 14 of the following calendar year, and a stability period from January 1 through December 31. In each case, the relevant employee has been employed continuously for several years.

*Example 1 (Look-back measurement method to monthly measurement method).* Employee A is an hourly employee. Based on Employee A's hours of service from October 15, 2015, through October 14, 2016, Employee A is treated as a full-time employee from January 1, 2017, through December 31, 2017. On July 1, 2017, Employee A transfers from a position as an hourly employee to a position as a salaried employee. For the months July 2017 through December 2017, Employee A must be treated as a full-time employee. Employee A is employed for hours of service from October 15, 2016, through October 14, 2017, such that under the applicable look-back measurement method Employee A would be treated as a full-time employee for the period of January 1, 2018, through December 31, 2018. Accordingly, Employee A must be treated as a full-time employee for the calendar year 2018. For calendar year 2019, the determination of whether Employee A is a full-time employee is made under the monthly measurement method.

*Example 2 (Look-back measurement method to monthly measurement method).* Same facts as *Example 1,* except that based on Employee A's hours of service from October 15, 2015, through October 14, 2016, Employee A is not treated as a full-time employee from January 1, 2017, through December 31, 2017. For the months July 2017 through December 2017, Employer Z may either treat Employee A as not a full-time employee or apply the monthly measurement method to determine Employee A's status as a full-time employee. Employee A is employed for hours of service from October 15, 2016, through October 14, 2017, such that under the applicable look-back measurement method Employee A would be treated as a full-time employee for the period of January 1, 2018, through December 31, 2018. Employee A must be treated as a full-time employee for the calendar year 2018. For calendar year 2019, the determination of whether Employee A is a full-time employee is made under the monthly measurement method.

*Example 3 (Look-back measurement method to monthly measurement method).* Same facts as *Example 1,* except that Employee A is employed for hours of service from October 15, 2016, through October 14, 2017, such that under the applicable look-back measurement method Employee A would not be treated as a full-time employee for the period of January 1, 2018, through December 31, 2018. For the calendar year 2018, Employer Z must treat Employee A as a full-time employee only for calendar months during which Employee A would be a full-time employee under the monthly measurement method. For calendar year 2019, the determination of whether Employee A is a full-time employee is made under the monthly measurement method.

*Example 4 (Monthly measurement method to look-back measurement method).* Employee B is a salaried employee of Employer Y. On July 1, 2017, Employee B transfers to an hourly employee position. Based on Employee B's hours of service from October 15, 2015, through October 14, 2016, Employee B would have been treated as a full-time employee for the stability period from January 1, 2017, through December 31, 2017, had the look-back measurement method applicable to hourly employees applied to Employee B for the entire stability period. For the calendar months January 2017 through June 2017 (prior to Employee B's change to hourly employee status), Employee B's status as a full-time employee is determined using the monthly measurement method. For the calendar months July 2017 through December 2017, Employer Y must treat Employee B as a full-time employee because Employee B would have been treated as a full-time employee during that portion of the stability period had the look-back measurement method applied to Employee B for that entire stability period. Employee B is employed for hours of service from October 15, 2016, through October 14, 2017, such that under the applicable look-back measurement method Employee B would be treated as a full-time employee for the period January 1, 2018, through December 31, 2018. Accordingly, Employee B must be treated as a full-time employee for the calendar year 2018. For calendar year 2019, the determination of whether Employee B is a full-time employee is made under the applicable look-back measurement method.

*Example 5 (Monthly measurement method to look-back measurement method).* Same facts as *Example 4,* except that based on Employee B's hours of service from October 15, 2015, through October 14, 2016, Employee B would not have been treated as a full-time employee from January 1, 2017, through December 31, 2017. For the calendar months of 2017, Employer Y applies the monthly measurement method to determine Employee B's status as a full-time employee. Employee B is employed for hours of service from October 15, 2016, through October 14, 2017, such that under the applicable look-back measurement method Employee B would be treated as a full-time employee for the period January 1, 2018, through December 31, 2018. Accordingly, Employee B must be treated as a full-time employee for the calendar year 2018. For calendar year 2019, the determination of whether Employee B is a full-time employee is made under the applicable look-back measurement method.

*Example 6 (Monthly measurement method to look-back measurement method).* Same facts as *Example 4,* except that Employee B is employed for hours of service from October 15, 2016, through October 14, 2017, such that under the applicable look-back measurement method Employee B would not be treated as a full-time employee for the period of January 1, 2018, through December 31, 2018. For the calendar year 2018, Employer Y must treat Employee B as a full-time employee only for calendar months during which Employee B would be a full-time employee under the monthly measurement method.

(2) *Special rule for certain employees to whom minimum value coverage has been continuously offered*—(i) *In general.* Notwithstanding the rules in paragraphs (e) and (f) of this section, an employer using the look-back measurement method to determine the full-time employee status of an employee may apply the monthly measurement method to that employee beginning on the first day of the fourth full calendar month following the calendar month in which the employee experiences a change in employment status such that, if the employee had begun employment in the new position or status, the employee would have reasonably been expected not to be employed on average at least 30 hours of service per week (for example, the employee has changed to a part-time position of only 20 hours of service per week). This rule only applies with respect to an employee to whom the applicable large employer member offered minimum value coverage by the first day of the calendar month following the employee's initial three full calendar months of employment through the calendar month in which the change in employment status described in this paragraph (f)(2) occurs, and only if the employee actually averages less than 30 hours of service per week for each of the three full calendar months following the change in employment status. For the three full calendar months between the employee's change in employment status and the application of the monthly measurement method, the employee's full-time employee status is determined based on the employee's status during the applicable stability period(s). Under this rule, an employer may apply the monthly measurement method to an employee even if the employer does not apply the monthly measurement method to the other employees in the same category of employees under paragraph (d)(1)(v) or (d)(3)(v) of this section (for example,

under this method an employer could apply the monthly measurement method to an hourly employee, even if the employer uses the look-back measurement method to determine full-time employee status of all other hourly employees). The employer may continue to apply the monthly measurement method through the end of the first full measurement period (and any associated administrative period) that would have applied had the employee remained under the applicable look-back measurement method.

(ii) *Examples.* The following examples illustrate the rule of paragraphs (f)(2) of this section. In each example, the employer is an applicable large employer with 200 full-time employees (including FTEs).

*Example 1 (New variable hour employee, no delay in coverage, becomes non-full-time employee).* (i) *Facts.* Employer Z, an applicable large employer, uses the look-back measurement method to determine the full-time employee status for all of its employees. On May 10, 2015, Employer Z hired Employee A who is a variable hour employee. Although Employee A is a new variable hour employee, so that Employer Z could wait until the end of an initial measurement period to offer coverage to Employee A without an assessable payment under section 4980H with respect to Employee A, Employer Z offers coverage that provides minimum value to Employee A on September 1, 2015. For its ongoing employees, Employer Z has chosen to use a 12-month standard measurement period starting October 15 and a 12-month stability period associated with that standard measurement period starting January 1. Employee A continues in employment with Employer Z for over five years and averages more than 30 hours of service per week for all measurement periods through the measurement period ending October 14, 2020. On February 12, 2021, Employee A experiences a change in position of employment with Employer Z to a position under which Employer Z reasonably expects Employee A to average less than 30 hours of service per week. For the calendar months after February 2021, Employee A averages less than 30 hours of service per week. Employer Z offered Employee A coverage that provided minimum value continuously from September 1, 2015, through May 31, 2021. Effective June 1, 2021, Employer Z elects to apply the monthly measurement method to determine Employee A's status as a full-time employee for the remainder of the stability period ending December 31, 2021, and the calendar year 2022 (which is through the end of the first full measurement period following the change in employment status plus the associated administrative period). Applying the stability period beginning January 1, 2021, Employer Z treats Employee A as a full-time employee for each calendar month from January 2021 through May 2021. Applying the monthly measurement method, for each calendar month from June 2021 through December 2022, Employer Z treats Employee A as not a full-time employee.

(ii) *Conclusion.* Because Employer Z offered coverage that provided minimum value to Employee A from no later than the first day of the fourth full calendar month following Employee A's start date through the calendar month in which the change in employment status occurred, and because Employee A did not average 30 hours of service per week for any of the three calendar months immediately following Employee A's change in employment status to an employee not reasonably expected to average 30 hours of service per week, Employer Z may use the monthly measurement method to determine the full-time employee status of Employee A beginning on the first day of the fourth month following the change in employment status (June 1, 2021) through the end of the first full measurement period (plus any associated administrative period) immediately following the change in employment status (December 31, 2022). Because Employee A did not average at least 30 hours of service per week for any calendar month from June 2021 through December 2022, Employer Z has properly treated Employee A as not a full-time employee for those calendar months.

*Example 2 (New full-time employee, no delay in coverage, becomes non-full-time employee).* (i) *Facts.* Same facts as *Example 1,* except that at Employee A's start date, Employer Z reasonably expects that Employee A will average at least 30 hours of service per week. Accordingly, Employer Z offers coverage to Employee A beginning on September 1, 2015, and offers coverage continuously to Employee A for all calendar months through May 2021.

(ii) *Conclusion.* Same as *Example 1.*

(g) *Nonpayment or late payment of premiums.* An applicable large employer member will not be treated as failing to offer to a full-time employee (and his or her dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan for an employee whose coverage under the plan is terminated during the coverage period solely due to the employee failing to make a timely payment of the employee portion of the premium. This treatment continues only through the end of the coverage period (typically the plan year). For this purpose, the rules in § 54.4980B–8, Q&A–5(a), (c), (d) and (e) apply under this section to the payment for coverage with respect to a full-time employee in the same manner that they apply to payment for COBRA continuation coverage under § 54.4980B–8.

(h) *Additional guidance.* With respect to the determination of full-time employee status, including determination of hours of service, the Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(i) *Effective/applicability date.* This section is applicable for periods after December 31, 2014.

**§ 54.4980H–4 Assessable payments under section 4980H(a).**

(a) *In general.* If an applicable large employer member fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan for any calendar month, and the applicable large employer member has received a Section 1411 Certification with respect to at least one full-time employee, an assessable payment is imposed. For the calendar month, the applicable large employer member will owe an assessable payment equal to the product of the section 4980H(a) applicable payment amount and the number of full-time employees of the applicable large employer member (other than employees in a limited non-assessment period for certain employees and as adjusted in accordance with paragraph (e) of this section). For purposes of this paragraph (a), an applicable large employer member is treated as offering such coverage to its full-time employees (and their dependents) for a calendar month if, for that month, it offers such coverage to all but five percent (or, if greater, five) of its full-time employees (provided that an employee is treated as having been offered coverage only if the employer also offers coverage to that employee's dependents). For purposes of the preceding sentence, an employee in a limited non-assessment period for certain employees is not included in the calculation.

(b) *Offer of coverage*—(1) *In general.* An applicable large employer member will not be treated as having made an offer of coverage to a full-time employee for a plan year if the employee does not have an effective opportunity to elect to enroll in the coverage at least once with respect to the plan year, or does not have an effective opportunity to decline to enroll if the coverage offered does not provide minimum value or requires an employee contribution for any calendar month of more than 9.5 percent of a monthly amount determined as the federal poverty line for a single individual for the applicable calendar year, divided by 12. For this purpose, the applicable federal poverty line is the federal poverty line for the 48 contiguous states and the District of Columbia. Whether an employee has an effective opportunity to enroll or to decline to enroll is determined based on all the relevant facts and circumstances,

including adequacy of notice of the availability of the offer of coverage, the period of time during which acceptance of the offer of coverage may be made, and any other conditions on the offer. An employee's election of coverage from a prior year that continues for the next plan year unless the employee affirmatively elects to opt out of the plan constitutes an offer of coverage for purposes of section 4980H.

(2) *Offer of coverage on behalf of another entity.* For purposes of section 4980H, an offer of coverage by one applicable large employer member to an employee for a calendar month is treated as an offer of coverage by all applicable large employer members for that calendar month. In addition, an offer of coverage made to an employee on behalf of a contributing employer under a multiemployer or single employer Taft-Hartley plan or multiple employer welfare arrangement (MEWA) is treated as made by the employer. For an offer of coverage to an employee performing services for an employer that is a client of a staffing firm, in cases in which the staffing firm is not the common law employer of the individual and the staffing firm makes an offer of coverage to the employee on behalf of the client employer under a plan established or maintained by the staffing firm, the offer is treated as made by the client employer for purposes of section 4980H only if the fee the client employer would pay to the staffing firm for an employee enrolled in health coverage under the plan is higher than the fee the client employer would pay the staffing firm for the same employee if that employee did not enroll in health coverage under the plan.

(c) *Partial calendar month.* If an applicable large employer member fails to offer coverage to a full-time employee for any day of a calendar month, that employee is treated as not offered coverage during that entire month, regardless of whether the employer uses the payroll period rule set forth in § 54.4980H–3(d)(1)(ii) or the weekly rule set forth in § 54.4980H–3(c)(3) to determine full-time employee status for the calendar month. However, in a calendar month in which the employment of a full-time employee terminates, if the employee would have been offered coverage for the entire calendar month had the employee been employed for the entire calendar month, the employee is treated as having been offered coverage for that entire calendar month. In addition, an applicable large employer member is not subject to an assessable payment under section 4980H with respect to an employee for the calendar month in which the employee's start date occurs if the start date is on a date other than the first day of the calendar month, and, in addition, with respect to the calendar month in which the start date occurs, such an employee is not included for purposes of the calculation of any potential liability under section 4980H(a).

(d) *Application to applicable large employer member.* The liability for an assessable payment under section 4980H(a) for a calendar month with respect to a full-time employee applies solely to the applicable large employer member that was the employer of that employee for that calendar month. For an employee who was an employee of more than one applicable large employer member of the same applicable large employer during a calendar month, the liability for the assessable payment under section 4980H(a) for a calendar month applies to the applicable large employer member for whom the employee has the greatest number of hours of service for that calendar month (if the employee has an equal number of hours of service for two or more applicable large employer members of the same applicable large employer for the calendar month, those applicable large employer members can treat one of those members as the employer of that employee for that calendar month for purposes of this section, and if the members do not select one member, or select in an inconsistent manner, the IRS will select a member to be treated as the employer of that employee for purposes of the assessable payment determination). For a calendar month, an applicable large employer member may be liable for an assessable payment under section 4980H(a) or under section 4980H(b), but will not be liable for an assessable payment under both section 4980H(a) and section 4980H(b).

(e) *Allocated reduction of 30 full-time employees.* For purposes of the liability calculation under paragraph (a) of this section, with respect to each calendar month, an applicable large employer member's number of full-time employees is reduced by that member's allocable share of 30. The applicable large employer member's allocation is equal to 30 allocated ratably among all members of the applicable large employer on the basis of the number of full-time employees employed by each applicable large employer member during the calendar month (after application of the rules of paragraph (d) of this section addressing employees who work for more than one applicable large employer member during a calendar month). If an applicable large employer member's total allocation is not a whole number, the allocation is rounded to the next highest whole number. This rounding rule may result in the aggregate reduction for the entire group of applicable large employer members exceeding 30.

(f) *Example.* The following example illustrates the provisions of paragraphs (a) and (e) of this section.

*Example.* (i) *Facts.* Applicable large employer member Z and applicable large employer member Y are the two members of an applicable large employer. Applicable large employer member Z employs 40 full-time employees in each calendar month of 2017. Applicable large employer member Y employs 35 full-time employees in each calendar month of 2017. Assume that for 2017, the applicable payment amount for a calendar month is $2,000 divided by 12. Applicable large employer member Z does not sponsor an eligible employer-sponsored plan for any calendar month of 2017, and receives a Section 1411 Certification for 2017 with respect to at least one of its full-time employees. Applicable large employer member Y sponsors an eligible employer-sponsored plan under which all of its full-time employees are eligible for minimum essential coverage.

(ii) *Conclusion.* Pursuant to section 4980H(a) and this section, applicable large employer member Z is subject to an assessable payment under section 4980H(a) for 2017 of $48,000, which is equal to 24 × $2,000 (40 full-time employees reduced by 16 (its allocable share of the 30-employee offset ((40/75) × 30 = 16)) and then multiplied by $2,000). Applicable large employer member Y is not subject to an assessable payment under section 4980H(a) for 2017.

(g) *Additional guidance.* With respect to assessable payments under section 4980H(a), the Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(h) *Effective/applicability date.* This section is applicable for periods after December 31, 2014.

**§ 54.4980H–5 Assessable payments under section 4980H(b).**

(a) *In general.* If an applicable large employer member offers to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan for any calendar month (including an offer of coverage to all but five percent or less (or, if greater, five or less) of its full-time employees (provided that an employee is treated as having been offered coverage only if the employer also offers coverage to that employee's dependents)) and the applicable large employer member has received a Section 1411 Certification with respect to one or more full-time employees of

the applicable large employer member, then there is imposed on the applicable large employer member an assessable payment equal to the product of the number of full-time employees of the applicable large employer member for which it has received a Section 1411 Certification (minus the number of those employees in a limited non-assessment period for certain employees and the number of other employees who were offered the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan that satisfied minimum value and met one or more of the affordability safe harbors described in paragraph (e) of this section) and the section 4980H(b) applicable payment amount. Notwithstanding the foregoing, the aggregate amount of assessable payment determined under this paragraph (a) with respect to all employees of an applicable large employer member for any calendar month may not exceed the product of the section 4980H(a) applicable payment amount and the number of full-time employees of the applicable large employer member during that calendar month (reduced by the applicable large employer member's ratable allocation of the 30 employee reduction under § 54.4980H–4(e)).

(b) *Offer of coverage.* For purposes of this section, the same rules with respect to an offer of coverage for purposes of section 4980H(a) apply. See § 54.4980H–4.

(c) *Partial calendar month.* If an applicable large employer member fails to offer coverage to a full-time employee for any day of a calendar month, that employee is treated as not offered coverage during that entire month, regardless of whether the employer uses the payroll period rule set forth in § 54.4980H–3(d)(1)(ii) or the weekly rule set forth in § 54.4980H–3(c)(3) to determine full-time employee status for the calendar month. However, in a calendar month in which a full-time employee's employment terminates, if the employee would have been offered coverage if the employee had been employed for the entire month, the employee is treated as having been offered coverage during that month. Also, an applicable large employer member is not subject to an assessable payment under section 4980H with respect to an employee for the calendar month in which the employee's start date occurs if the start date is on a date other than the first day of the calendar month.

(d) *Applicability to applicable large employer member.* The liability for an assessable payment under section 4980H(b) for a calendar month with respect to a full-time employee applies solely to the applicable large employer member that was the employer of that employee for that calendar month. For an employee who was a full-time employee of more than one applicable large employer member during that calendar month, the liability for the assessable payment under section 4980H(b) for a calendar month applies to the applicable large employer member for whom the employee has the greatest number of hours of service for that calendar month (if the employee has an equal number of hours of service for two or more applicable large employer members for the calendar month, those applicable large employer members can treat one of those members as the employer of that employee for that calendar month for purposes of this paragraph (d), and if the members do not select one member, or select in an inconsistent manner, the IRS will select a member to be treated as the employer of that employee for purposes of the assessable payment determination). For a calendar month, an applicable large employer member may be liable for an assessable payment under section 4980H(a) or under section 4980H(b), but will not be liable for an assessable payment under both section 4980H(a) and section 4980H(b).

(e) *Affordability*—(1) *In general.* An employee who is offered coverage by an applicable large employer member may be eligible for an applicable premium tax credit or cost-sharing reduction if that offer of coverage is not affordable within the meaning of section 36B(c)(2)(C)(i) and the regulations thereunder.

(2) *Affordability safe harbors for section 4980H(b) purposes.* The affordability safe harbors set forth in paragraph (e)(2)(ii) through (iv) of this section apply solely for purposes of section 4980H(b), so that an applicable large employer member that offers minimum essential coverage providing minimum value will not be subject to an assessable payment under section 4980H(b) with respect to any employee receiving the applicable premium tax credit or cost-sharing reduction for a period for which the coverage is determined to be affordable under the requirements of an affordability safe harbor. This rule applies even if the applicable large employer member's offer of coverage that meets the requirements of an affordability safe harbor is not affordable for a particular employee under section 36B(c)(2)(C)(i) and an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to that employee.

(i) *Conditions of using an affordability safe harbor.* An applicable large employer member may use one or more of the affordability safe harbors described in this paragraph (e)(2) only if the employer offers its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan that provides minimum value with respect to the self-only coverage offered to the employee. Use of any of the safe harbors is optional for an applicable large employer member, and an applicable large employer member may choose to apply the safe harbors for any reasonable category of employees, provided it does so on a uniform and consistent basis for all employees in a category. Reasonable categories generally include specified job categories, nature of compensation (hourly or salary), geographic location, and similar bona fide business criteria. An enumeration of employees by name or other specific criteria having substantially the same effect as an enumeration by name is not considered a reasonable category.

(ii) *Form W–2 safe harbor*–(A) *Full-year offer of coverage.* An employer will not be subject to an assessable payment under section 4980H(b) with respect to a full-time employee if that employee's required contribution for the calendar year for the employer's lowest cost self-only coverage that provides minimum value during the entire calendar year (excluding COBRA or other continuation coverage except with respect to an active employee eligible for continuation coverage) does not exceed 9.5 percent of that employee's Form W–2 wages from the employer (and any other member of the same applicable large employer that also pays wages to that employee) for the calendar year. Application of this safe harbor is determined after the end of the calendar year and on an employee-by-employee basis, taking into account the Form W–2 wages and the required employee contribution for that year. In addition, to qualify for this safe harbor, the employee's required contribution must remain a consistent amount or percentage of all Form W–2 wages during the calendar year (or during the plan year for plans with non-calendar year plan years) so that an applicable large employer member is not permitted to make discretionary adjustments to the required employee contribution for a pay period. A periodic contribution that is based on a consistent percentage of all Form W–2 wages may be subject to a dollar limit specified by the employer.

(B) *Adjustment for partial-year offer of coverage.* For an employee not offered

coverage for an entire calendar year, the Form W–2 safe harbor is applied by adjusting the Form W–2 wages to reflect the period for which coverage was offered, then determining whether the employee's required contribution for the employer's lowest cost self-only coverage that provides minimum value, totaled for the periods during which coverage was offered, does not exceed 9.5 percent of the adjusted amount of Form W–2 wages. To adjust Form W–2 wages for this purpose, the Form W–2 wages are multiplied by a fraction equal to the number of calendar months for which coverage was offered over the number of calendar months in the employee's period of employment with the employer during the calendar year. For this purpose, if coverage is offered during at least one day during the calendar month, or the employee is employed for at least one day during the calendar month, the entire calendar month is counted in determining the applicable fraction.

(iii) *Rate of pay safe harbor.* An applicable large employer member satisfies the rate of pay safe harbor with respect to an hourly employee for a calendar month if the employee's required contribution for the calendar month for the applicable large employer member's lowest cost self-only coverage that provides minimum value does not exceed 9.5 percent of an amount equal to 130 hours multiplied by the lower of the employee's hourly rate of pay as of the first day of the coverage period (generally the first day of the plan year) or the employee's lowest hourly rate of pay during the calendar month. An applicable large employer member satisfies the rate of pay safe harbor with respect to a non-hourly employee for a calendar month if the employee's required contribution for the calendar month for the applicable large employer member's lowest cost self-only coverage that provides minimum value does not exceed 9.5 percent of the employee's monthly salary, as of the first day of the coverage period (instead of 130 multiplied by the hourly rate of pay); provided that if the monthly salary is reduced, including due to a reduction in work hours, the safe harbor is not available, and, solely for purposes of this paragraph (e)(2)(iii), an applicable large employer member may use any reasonable method for converting payroll periods to monthly salary. For this purpose, if coverage is offered during at least one day during the calendar month, the entire calendar month is counted both for purposes of determining the assumed income for the calendar month and for determining the employee's share of the premium for the calendar month.

(iv) *Federal poverty line safe harbor.* An applicable large employer member satisfies the federal poverty line safe harbor with respect to an employee for a calendar month if the employee's required contribution for the calendar month for the applicable large employer member's lowest cost self-only coverage that provides minimum value does not exceed 9.5 percent of a monthly amount determined as the federal poverty line for a single individual for the applicable calendar year, divided by 12. For this purpose, if coverage is offered during at least one day during the calendar month, the entire calendar month is counted both for purposes of determining the monthly amount for the calendar month and for determining the employee's share of the premium for the calendar month. For this purpose, the applicable federal poverty line is the federal poverty line for the State in which the employee is employed.

(v) *Examples.* The following examples illustrate the application of the affordability safe harbors described in this paragraph (e)(2). In each example, each employer is an applicable large employer member with 200 full-time employees (including full-time equivalent employees).

*Example 1 (Form W–2 wages safe harbor).* (i) *Facts.* Employee A is employed by Employer Z consistently from January 1, 2015, through December 31, 2015. In addition, Employer Z offers Employee A and his dependents minimum essential coverage during that period that provides minimum value. The employee contribution for self-only coverage is $100 per calendar month, or $1,200 for the calendar year. For 2015, Employee A's Form W–2 wages with respect to employment with Employer Z are $24,000.

(ii) *Conclusion.* Because the employee contribution for 2015 is less than 9.5 percent of Employee A's Form W–2 wages for 2015, the coverage offered is treated as affordable with respect to Employee A for 2015 ($1,200 is 5 percent of $24,000).

*Example 2 (Form W–2 wages safe harbor).* (i) *Facts.* Employee B is employed by Employer Y from January 1, 2015, through September 30, 2015. In addition, Employer Y offers Employee B and his dependents minimum essential coverage during that period that provides minimum value. The employee contribution for self-only coverage is $100 per calendar month, or $900 for Employee B's period of employment. For 2015, Employee B's Form W–2 wages with respect to employment with Employer Y are $18,000. For purposes of applying the affordability safe harbor, the Form W–2 wages are multiplied by 9/9 (9 calendar months of coverage offered over 9 months of employment during the calendar year) or 1. Accordingly, affordability is determined by comparing the adjusted Form W–2 wages ($18,000) to the employee contribution for the period for which coverage was offered ($900).

(ii) *Conclusion.* Because the employee contribution for 2015 is less than 9.5 percent of Employee B's adjusted Form W–2 wages for 2015, the coverage offered is treated as affordable with respect to Employee B for 2015 ($900 is 5 percent of $18,000).

*Example 3 (Form W–2 wages safe harbor).* (i) *Facts.* Employee C is employed by Employer X from May 15, 2015, through December 31, 2015. In addition, Employer X offers Employee C and her dependents minimum essential coverage during the period from August 1, 2015, through December 31, 2015, that provides minimum value. The employee contribution for self-only coverage is $100 per calendar month, or $500 for Employee C's period of employment. For 2015, Employee C's Form W–2 wages with respect to employment with Employer X are $15,000. For purposes of applying the affordability safe harbor, the Form W–2 wages are multiplied by 5/8 (5 calendar months of coverage offered over 8 months of employment during the calendar year). Accordingly, affordability is determined by comparing the adjusted Form W–2 wages ($9,375 or $15,000 x 5/8) to the employee contribution for the period for which coverage was offered ($500).

(ii) *Conclusion.* Because the employee contribution of $500 is less than 9.5 percent of $9,375 (Employee C's adjusted Form W–2 wages for 2015), the coverage offered is treated as affordable with respect to Employee C for 2015 ($500 is 5.33 percent of $9,375).

*Example 4 (Rate of pay safe harbor).* (i) *Facts.* Employer W offers its full-time employees and their dependents minimum essential coverage that provides minimum value. For the 2016 calendar year, Employer W is using the rate of pay safe harbor to establish premium contribution amounts for full-time employees paid at a rate of $7.25 per hour (the minimum wage in Employer W's jurisdiction) for each calendar month of the entire 2016 calendar year. Employer W can apply the affordability safe harbor by using an assumed monthly income amount that is based on an assumed 130 hours of service multiplied by $7.25 per hour ($942.50 per calendar month). To satisfy the safe harbor, Employer W would set the employee monthly contribution amount at a rate that does not exceed 9.5 percent of the assumed monthly income of $942.50. Employer W sets the employee contribution for self-only coverage at $85 per calendar month for 2016.

(ii) *Conclusion.* Because $85 is less than 9.5 percent of the employee's assumed monthly income at a $7.25 rate of pay, the coverage offered is treated as affordable under the rate of pay safe harbor for each calendar month of 2016 ($85 is 9.01 percent of $942.50).

*Example 5 (Rate of pay safe harbor).* (i) *Facts.* Employee E is employed by Employer V from May 1, 2015, through December 31, 2015. Employer V offers Employee E and her dependents minimum essential coverage from May 1, 2015, through December 31, 2015, that provides minimum value. The employee contribution for self-only coverage is $100 per calendar month. From May 1,

2015, through October 31, 2015, Employee E is paid at a rate of $10 per hour. From November 1, 2015, through December 31, 2015, Employee E is paid at a rate of $12 per hour. For purposes of applying the affordability safe harbor for the calendar months May 2015 through October 2015, Employer V may assume that Employee E earned $1,300 per calendar month (130 hours of service multiplied by $10 (which is the lower of the employee's hourly rate of pay at the beginning of the coverage period ($10) and the lowest hourly rate of pay for the calendar month ($10)). Accordingly, affordability is determined by comparing the assumed income ($1,300 per month) to the employee contribution ($100 per calendar month). For the calendar months November 2015 through December 2015, Employer V may assume that Employee E earned $1,300 per calendar month (130 hours of service multiplied by $10 (which is the lower of the employee's hourly rate of pay at the beginning of the coverage period ($10) and the lowest hourly rate of pay for the calendar month ($12)). Accordingly, affordability is determined by comparing the assumed income ($1,300 per month) to the employee contribution ($100 per calendar month).

(ii) *Conclusion.* Because $100 is less than 9.5 percent of Employee E's assumed monthly income for each calendar month from May 2015 through December 2015, the coverage offered is treated as affordable with respect to Employee E for May 2015 through December 2015 ($100 is 7.69 percent of $1,300).

*Example 6 (Federal poverty line safe harbor).* (i) *Facts.* Employee F is employed by Employer T from January 1, 2015, through December 31, 2015. In addition, Employer T offers Employee F and his dependents minimum essential coverage during that period that provides minimum value. Employer T uses the look-back measurement method. Under that measurement method as applied by Employer T, Employee F is treated as a full-time employee for the entire calendar year 2015. Employee F is regularly credited with 35 hours of service per week but is credited with only 20 hours of service during the month of March 2015 and only 15 hours of service during the month of August 2015. Assume for this purpose that the federal poverty line for 2015 for an individual is $11,670. With respect to Employee F, Employer T sets the monthly employee contribution for employee single-only coverage for each calendar month of 2015 at $92.39 (9.5 percent of $11,670, divided by 12).

(ii) *Conclusion.* Regardless of Employee F's actual wages for any calendar month in 2015, including the months of March 2015 and August 2015, when Employee F has lower wages because of significantly lower hours of service, the coverage under the plan is treated as affordable with respect to Employee F, because the employee contribution does not exceed 9.5 percent of the federal poverty line.

(f) *Additional guidance.* With respect to assessable payments under section 4980H(b), including the determination of whether an offer of coverage is affordable for purposes of section 4980H, the Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(g) *Effective/applicability date.* This section is applicable for periods after December 31, 2014.

**§ 54.4980H–6 Administration and procedure.**

(a) *In general.* [Reserved]

(b) *Effective/applicability date.* This section is applicable for periods after December 31, 2014.

## PART 301—PROCEDURE AND ADMINISTRATION

**Par. 5.** The authority citation for part 301 continues to read in part as follows:

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

**Par. 6.**

Section 301.7701–2 is amended as follows:

■ 1. In paragraph (c)(2)(v)(A)(*3*), the language ''and 4412; and'' is removed and ''and 4412;'' is added in its place.

■ 2. In paragraph (c)(2)(v)(A)(*4*), the language ''or 6427.'' is removed and ''or 6427; and'' is added in its place.

■ 3. Paragraphs (c)(2)(v)(A)(*5*) and (e)(6)(iii) are added.

The additions read as follows:

**§ 301.7701–2 Business entities; definitions.**

* * * * *

(c) * * *

(2) * * *

(v) * * *

(A) * * *

(*5*) Assessment and collection of an assessable payment imposed by section 4980H and reporting required by section 6056.

* * * * *

(e) * * *

(6) * * *

(iii) Paragraph (c)(2)(v)(A)(*5*) of this section applies for periods after December 31, 2014.

* * * * *

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: February 7, 2014.

**Mark J. Mazur,**

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

[FR Doc. 2014–03082 Filed 2–10–14; 4:15 pm]

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