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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Parts 3 and 50

**[Docket ID OCC–2014–0028]**

**RIN 1557–AD91**

## FEDERAL RESERVE SYSTEM

### 12 CFR Parts 217 and 249

**[Regulations Q and WW; Docket No. R–1507]**

**RIN 7100 AE–28**

## Regulatory Capital Rules, Liquidity Coverage Ratio: Interim Final Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions

**AGENCY:** Office of the Comptroller of the Currency (OCC) and Board of Governors of the Federal Reserve System (Board).

**ACTION:** Interim final rule with request for comment.

**SUMMARY:** The OCC and Board (collectively, the agencies) invite comment on an interim final rule that amends the definition of ''qualifying master netting agreement'' under the regulatory capital rules, and the liquidity coverage ratio rule, as well as under the lending limits rule applicable to national banks and Federal savings associations. The agencies also are proposing to amend the definitions of ''collateral agreement,'' ''eligible margin loan,'' and ''repo-style transaction'' under the regulatory capital rules. The amendments are designed to ensure that the regulatory capital, liquidity, and lending limits treatment of certain financial contracts is not affected by implementation of special resolution regimes in foreign jurisdictions or by the International Swaps and Derivative Association Resolution Stay Protocol.

**DATES:** This rule is effective on January 1, 2015. Comments must be received on or before March 3, 2015.

**ADDRESSES:** Interested parties are encouraged to submit written comments jointly to each of the agencies. Commenters are encouraged to use the title ''Regulatory Capital Rules, Liquidity Coverage Ratio: Interim Final Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions'' to facilitate the organization and distribution of comments among the Agencies.

*OCC:* Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Regulatory Capital Rules, Liquidity Coverage Ratio: Interim Final Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov''*: Go to *http://www.regulations.gov*. Enter ''Docket ID OCC–2014–0028'' in the Search Box and click ''Search.'' Results can be filtered using the filtering tools on the left side of the screen. Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using *Regulations.gov*, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Email: regs.comments@occ.treas.gov*.
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

*Instructions:* You must include ''OCC'' as the agency name and ''Docket ID OCC–2014–0028'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the *Regulations.gov* Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this proposed rulemaking by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov*. Enter ''Docket ID OCC–2014–0028'' in the Search box and click ''Search.'' Comments can be filtered by agency using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

*Board:* When submitting comments, please consider submitting your comments by email or fax because paper mail in the Washington, DC area and at the Board may be subject to delay. You may submit comments, identified by Docket No. R–1507 and RIN 7100 AE 28, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* .
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW., Washington, DC 20551) between 9:00 a.m. and 5:00 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Margot Schwadron, Senior Risk Expert, (202) 649–6982; or Nicole Billick, Risk Expert, (202) 649–7932, Capital Policy; or Valerie Song, Senior Attorney, (202) 649–5500, Bank Activities and Structure, or Carl Kaminski, Counsel, or Ron Shimabukuro, Senior Counsel, Legislative and Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

*Board:* Constance M. Horsley, Assistant Director, (202) 452–5239, Thomas Boemio, Manager (202) 452–2982, or Kevin R. Tran, Supervisory Financial Analyst, (202) 452–2309, Capital and Regulatory Policy, Division of Banking Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452–2277, Christine Graham, Counsel, (202) 452–3005, Will Giles, Counsel, (202) 452–3351, or Trevor Feigleson, Attorney, (202) 475–3274, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

**SUPPLEMENTARY INFORMATION:**

## I. Summary

The agencies' regulatory capital rules permit a banking organization to measure exposure from certain types of financial contracts on a net basis and recognize the risk-mitigating effect of financial collateral for other types of exposures, provided that the contracts are subject to a ''qualifying master netting agreement'' or agreement that provides for certain rights upon a counterparty default.[1] The agencies, by rule, have defined a qualifying master netting agreement as a netting agreement that permits a banking organization to terminate, apply close-out netting, and promptly liquidate or set-off collateral upon an event of default of the counterparty (default rights), thereby reducing its counterparty exposure and market risks.[2] On the whole, measuring the amount of exposure of these contracts on a net basis, rather than a gross basis, results in a lower measure of exposure, and thus, a lower capital requirement under the regulatory capital rules.

The current definition of ''qualifying master netting agreement'' recognizes that default rights may be stayed if the financial company is in receivership, conservatorship, or resolution under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[3] or the Federal Deposit Insurance Act (FDI Act).[4] Accordingly, transactions conducted under netting agreements where default rights may be stayed under Title II of the Dodd-Frank Act or the FDI Act may qualify for the favorable capital treatment described above. However, the current definition of ''qualifying master netting agreement'' does not recognize that default rights may be stayed where a master netting agreement is subject to limited stays under foreign special resolution regimes or where counterparties agree through contract that a special resolution regime would apply. When the agencies adopted the current definition of ''qualifying master netting agreement,'' no other country had adopted a special resolution regime relevant to the definition, and no banking organizations had communicated to the agencies an intent to enter into contractual amendments to clarify that bilateral over-the-counter (OTC) derivatives transactions are subject to certain provisions of certain U.S. and foreign special resolution regimes.

In recent months, the European Union (EU) finalized the Bank Recovery and Resolution Directive (BRRD), which prescribes aspects of a special resolution regime that EU member nations should implement. In addition, several U.S. banking organizations have opted to adhere to the International Swaps and Derivatives Association's (ISDA) Resolution Stay Protocol (ISDA Protocol),[5] which provides for amendments to the terms of ISDA Master Agreements[6] between counterparties that adhere to the ISDA Protocol to stay certain default rights and other remedies provided under the agreements. The expected implementation of the BRRD by EU member nations and the effective date of certain provisions of the ISDA Protocol may be as early as January 1, 2015. This expected implementation would mirror steps taken in the United States to implement a special resolution regime under Title II of the Dodd-Frank Act.

A master netting agreement under which default rights may be stayed under the BRRD or that incorporates the amendments of the ISDA Protocol would no longer qualify as a qualifying master netting agreement under the regulatory capital, liquidity, and lending limits rules. This would result in considerably higher capital and liquidity requirements that could discourage both the implementation of the BRRD and the ISDA Protocol and the realization of the benefits of these efforts in improving financial stability. In addition, affected national banks and Federal savings associations would be required to measure their lending limits on a gross basis, which would increase the measure of exposure in a manner not contemplated or intended under the current lending limits rules. This result flows from the use of ''qualifying master

[1] See 12 CFR part 3 (OCC) and 12 CFR part 217 (Board). All references to sections in the regulatory capital rules should be read to mean references to the corresponding sections to the applicable CFR part of each agency's rules. The term ''banking organization'' includes national banks, state member banks, savings associations, and top-tier bank holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), as well as top-tier savings and loan holding companies domiciled in the United States, except for certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities.

[2] See section 2 of the regulatory capital rules.

[3] See 12 U.S.C. 5390(c)(8)–(16).

[4] See 12 U.S.C. 1821(e)(8)–(13). The definition would also recognize that default rights may be stayed under any similar insolvency law applicable to government sponsored enterprises (GSEs). Generally under the agencies' regulatory capital rules, GSE means an entity established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government. See regulatory capital rules section 2.

[5] See ISDA Protocol at *http://assets.isda.org/media/f253b540-25/958e4aed.pdf/.*

[6] The ISDA Master Agreement is a form of agreement that governs OTC derivatives transactions and is used by a significant portion of the parties to bilateral OTC derivatives transactions, including large, internationally active banking organizations. Furthermore, the ISDA Master Agreement generally creates a single legal obligation that provides for the netting of all individual transactions covered by the agreement.

netting agreement'' as a cross-reference in the lending limits rules.

Accordingly, effective January 1, 2015, the interim final rule would permit an otherwise qualifying master netting agreement to qualify if (i) default rights under the agreement may be stayed under a qualifying foreign special resolution regime or (ii) the agreement incorporates a qualifying special resolution regime by contract. Through these revisions, the interim final rule maintains the existing treatment for these contracts for purposes of the regulatory capital, liquidity, and for national banks and Federal savings associations, lending limits rules, while recognizing the recent changes contemplated by the BRRD and the ISDA Protocol.

The interim final rule also revises certain other definitions of the regulatory capital rules to make various conforming changes designed to ensure that a banking organization may continue to recognize the risk mitigating effects of financial collateral [7] received in a secured lending transaction, repo-style transaction, or eligible margin loan for purposes of the regulatory capital, liquidity, and lending limits rules, while recognizing the recent changes contemplated by the BRRD and banking organizations that have adhered to the ISDA Protocol. Specifically, the interim final rule would revise the definition of ''collateral agreement,'' ''eligible margin loan,'' [8] and ''repo-style transaction'' [9] to provide that a counterparty's default rights may be stayed under a foreign special resolution regime or, if applicable, under a special resolution regime incorporated by contract.[10] The agencies request comment on all aspects of these definitions.

## II. Background

### *A. U.S. Resolution Regime*

It is common market practice for bilateral derivatives and certain other types of financial contracts entered into by large banking organizations to permit a non-defaulting counterparty to exercise early termination rights and other contractual remedies upon a counterparty (or a related entity) experiencing an event of default. These contractual provisions are generally recognized as a credit risk mitigant because the provisions allow a non-defaulting party the uninterrupted right to close-out, net, and liquidate any collateral securing its claim under the contract upon a counterparty's default.

However, as the failure of Lehman Brothers demonstrated, the uninterrupted exercise of such rights by counterparties of a globally-active financial company with a significant derivatives portfolio could impede the orderly resolution of the financial company and pose risks to financial stability. The United States has enacted laws that impose a limited stay on the exercise of early termination rights and other remedies with regard to qualified financial contracts (such as OTC derivatives, securities financing transactions, and margin loans) with insured depository institutions in resolution under the FDI Act and, in 2010, with financial companies in resolution under Title II of the Dodd-Frank Act.

### *B. Foreign Special Resolution Procedures and the ISDA Protocol*

In recognition of the issues faced in the financial crisis concerning resolution of globally-active financial companies, the EU issued the BRRD on April 15, 2014, which requires EU member states to implement a resolution mechanism by December 31, 2014, in order to increase the likelihood for successful national or cross-border resolutions of a financial company organized in the EU.[11] The BRRD contains special resolution powers, including a limited stay on certain financial contracts that is similar to the stays provided under Title II of the Dodd-Frank Act and the FDI Act. Therefore, the operations of U.S. banking organizations located in jurisdictions that have implemented the BRRD could become subject to an orderly resolution under the BRRD, including the application of a limited statutory stay of a counterparty's right to exercise early termination rights and other remedies with respect to certain financial contracts. The BRRD is generally designed to be consistent with the *Key Attributes of Effective Resolution Regimes for Financial Institutions* (Key Attributes),[12] which were initially adopted by the Financial Stability Board (FSB) [13] of the G–20 [14]

[7] Generally, under the agencies' regulatory capital rules, financial collateral means collateral in the form of: (i) Cash on deposit with the banking organization (including cash held for the banking organization by a third-party custodian or trustee); (ii) gold bullion; (iii) long-term debt securities that are not resecuritization exposures and that are investment grade; (iv) short-term debt instruments that are not resecuritization exposures and that are investment grade; (v) equity securities that are publicly traded; (vi) convertible bonds that are publicly traded; or (vii) money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily. In addition, the regulatory capital rules also require that the banking organization have a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent). See regulatory capital rule, section 2.

[8] Generally under the agencies' regulatory capital rules, eligible margin loan means an extension of credit where: (i) The extension of credit is collateralized exclusively by liquid and readily marketable debt or equity securities, or gold; (ii) the collateral is marked-to-fair value daily, and the transaction is subject to daily margin maintenance requirements; and (iii) the extension of credit is conducted under an agreement that provides the banking organization with default rights, provided that any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the FDI Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs. See regulatory capital rule, section 2. In addition, in order to recognize an exposure as an eligible margin loan a banking organization must comply with the requirements of section 3(b) of the regulatory capital rules with respect to that exposure.

[9] Generally, under the agencies' regulatory capital rules, repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the banking organization acts as agent for a customer and indemnifies the customer against loss, provided that: (1) The transaction is based solely on liquid and readily marketable securities, cash, or gold; (2) the transaction is marked-to-fair value daily and subject to daily margin maintenance requirements; (3) the transaction provides certain default rights. See regulatory capital rule, section 2. In addition, in order to recognize an exposure as a repo-style transaction for purposes of this subpart, a banking organization must comply with the requirements of section 3(e) of the regulatory capital rules.

[10] See 12 CFR part 32.

[11] On January 1, 2015, most of the provisions of the BRRD are expected to take effect in a number of the EU member states.

[12] The Key Attributes are available at *www.financialstabilityboard.org/publications/r_111104cc.pdf.* See specifically Key Attributes 4.1–4.4 regarding set-off, netting, collateralization and segregation of client assets and Appendix I Annex 5 regarding temporary stays on early termination rights. In October 2014, the FSB adopted a 2014 version of the Key Attributes that incorporates new annexes to provide additional guidance with respect to specific Key Attributes. No changes were made to the text of the twelve Key Attributes of October 2011.

[13] The FSB is an international body that monitors and makes recommendations about the global financial system. The FSB coordinates the regulatory, supervisory, and other financial sector policies of national financial authorities and international standard-setting bodies.

[14] The G–20 membership comprises a mix of the world's largest advanced and emerging economies. The G–20 members are Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, Mexico, Russia,

Continued

member nations in October 2011, and are designed to provide a standard for the responsibilities and powers that national resolution regimes should have to resolve a failing systemically important financial institution.

In addition to the issuance of the BRRD, on November 4, 2014, ISDA published the ISDA Protocol, which enables counterparties to amend the terms of their ISDA Master Agreements to stay certain early termination rights and other remedies provided under the agreement. As of November 12, 2014, 18 global financial institutions, including several of the largest U.S. banking organizations,[15] have opted to adhere to the ISDA Protocol and thereby would modify ISDA Master Agreements among those adhering parties. Like other qualified financial contracts, OTC derivatives transactions executed under standard ISDA Master Agreements allow a party to terminate the agreement immediately upon an event of default of its counterparty, including if its counterparty (or a related entity) [16] enters insolvency or similar proceedings.

The contractual amendments effectuated pursuant to the ISDA Protocol would apply the provisions of Title II of the Dodd-Frank Act and the FDI Act concerning limited stays of termination rights and other remedies in qualified financial contracts to ISDA Master Agreements between adhering counterparties, including adhering counterparties that are not otherwise subject to U.S. law. The amendments also would apply substantially similar provisions of certain non-U.S. laws, such as the BRRD, to ISDA Master Agreements between adhering counterparties that are not otherwise subject to such laws.[17] The contractual amendments effectuated pursuant to the ISDA Protocol would permit a party that has agreed to adhere to the ISDA Protocol to exercise early termination rights and other remedies only to the extent that it would be entitled to do so under the special resolution regime applicable to its adhering counterparties (or related entities, as applicable).[18]

*C. Description of Relevant Provisions of the Regulatory Capital and the Liquidity Coverage Ratio Rules*

As noted above, the agencies' regulatory capital rules permit a banking organization to measure exposure from certain types of financial contracts on a net basis, provided that the contracts are subject to a qualifying master netting agreement or other agreement that contains specific provisions. Specifically, under the regulatory capital rules, a banking organization with multiple OTC derivatives that are subject to a qualifying master netting agreement would be able to calculate a net exposure amount by netting the sum of all positive and negative fair values of the individual OTC derivative contracts subject to the qualifying master netting agreement and calculating a risk-weighted asset amount based on the net exposure amount. For purposes of the supplementary leverage ratio (as applied only to advanced approaches banking organizations), a banking organization that has one or more OTC derivatives with the same counterparty that are subject to a qualifying master netting agreement would be permitted to not include in total leverage exposure cash variation margin received from such counterparty that has offset the mark-to-fair value of the derivative asset or cash collateral that is posted to such counterparty that has reduced the banking organization's on-balance sheet assets.[19]

In addition, the agencies' rules permit a banking organization to recognize the risk-mitigating effect of financial collateral for other types of collateralized exposures. Specifically, for risk-based capital purposes, a banking organization with a securities financing transaction that meets the definition of a repo-style transaction with financial collateral, a margin loan that meets the definition of an eligible margin loan with financial collateral, or an OTC derivative contract collateralized with financial collateral may determine a net exposure amount to its counterparty according to section 37 or section 132 of the regulatory capital rules. A banking organization with multiple repo-style transactions or eligible margin loans with a counterparty that are subject to a qualifying master netting agreement may net the exposure amounts of the individual transactions under that agreement. In addition, for purposes of the supplementary leverage ratio, an advanced approaches banking organization with multiple repo-style transactions with the same counterparty that are subject to a qualifying master netting agreement would be permitted to net for purposes of calculating the counterparty credit risk component of its total leverage exposure. In general, recognition of netting results in a lower measure of risk-weighted assets and total leverage exposure than if a banking organization were to calculate its OTC derivatives, repo-style transactions, and eligible margin loans on a gross basis. This result is consistent with the view that entering into transactions under a netting agreement that satisfies certain criteria reduces a banking organization's risk exposure.

Saudi Arabia, South Africa, Turkey, the United Kingdom, the United States, and the European Union. Following the most recent financial crisis, leaders of the G–20 member nations recognized that the orderly cross-border resolution of a globally-active financial company requires all countries to have effective national resolution regimes to resolve failing financial companies in an orderly manner and that national resolution regimes should be consistent with one another. Subjecting the same financial company to conflicting legal rules, procedures, and mechanisms across jurisdictions can create uncertainty, instability, possible systemic contagion, and higher costs of resolution.

[15] As of November 12, 2014, the U.S. banking organizations that have agreed to adhere to the ISDA Protocol are Bank of America Corporation, Citigroup Inc., The Goldman Sachs Group, Inc., JPMorgan Chase & Co., and Morgan Stanley, and certain subsidiaries thereof. See current list of adhering parties to the ISDA Protocol at *http://www2.isda.org/functional-areas/protocol-management/protocol-adherence/20*.

[16] Under the ISDA Resolution Stay Protocol, a related entity is defined to include (i) each parent or (ii) an affiliate that is (a) a creditor support provider or (b) a specified entity.

[17] The provisions of the ISDA Protocol relating to the special resolution regimes in these jurisdictions will become effective on January 1, 2015, for ISDA Master Agreements between the 18 adhering financial companies (as of November 21, 2014). The ISDA Protocol also covers special resolution regimes in other FSB member jurisdictions so long as the regimes meet conditions specified in the ISDA Protocol relating to creditor safeguards, which are consistent with the Key Attributes.

[18] Parties adhering to the ISDA Protocol would initially be contractually subject to the statutory special resolution regimes of France, Germany, Japan, Switzerland, the United Kingdom and the United States.

[19] Under the agencies' regulatory capital rules, the general framework consists of two approaches: (1) The standardized approach, which, beginning on January 1, 2015, will apply to all banking organizations regardless of total asset size, and (2) the advanced approaches, which currently apply to large internationally active banking organizations (defined as those banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposure, depository institution subsidiaries of those banking organizations that use the advanced approaches rule, and banking organizations that elect to use the advanced approaches). As a general matter, the standardized approach sets forth standardized risk weights for different asset types for regulatory capital calculations, whereas, for certain assets, the advanced approaches make use of risk assessments provided by banking organizations' internal systems as inputs for regulatory capital calculations. Consistent with section 171 of the Dodd-Frank Act (codified at 12 U.S.C. 5371), a banking organization that is required to calculate its risk-based capital requirements under the advanced approaches (*i.e.*, an advanced approaches banking organization) also must determine its risk-based capital requirements under the generally applicable risk-based capital rules, which will be the standardized approach beginning on January 1, 2015). The lower—or more binding—ratio for each risk-based capital requirement is the ratio that the advanced approaches banking organization must use to determine its compliance with minimum regulatory capital requirements. See generally 12 CFR part 3 (OCC) and 12 CFR part 217 (Board).

The agencies also use the concept of a qualifying master netting agreement in the liquidity coverage ratio (LCR) rule.[20] The LCR rule requires a banking organization to maintain an amount of high-quality liquid assets (the numerator) to match at least 100 percent of its total net cash outflows over a prospective 30 calendar-day period (the denominator). For derivative transactions subject to a qualifying master netting agreement, a banking organization would be able to calculate the net derivative outflow or inflow amount by netting the contractual payments and collateral that it would give to, or receive from, the counterparty over a prospective 30-day period.[21] If the derivative transactions are not subject to a qualifying master netting agreement, then the derivative cash outflows for that counterparty would be included in the net derivative cash outflow amount and the derivative cash inflows for that counterparty would be included in the net derivative cash inflow amount, without any netting and subject to the LCR rule's cap on total inflows. Recognition of netting may result in lower net cash outflows, and thus a lower LCR denominator and liquidity requirement, than if a banking organization were to calculate its inflows and outflows on its derivatives transactions on a gross basis.

## III. The Interim Final Rule

The interim final rule amends the definitions of ''collateral agreement,'' ''eligible margin loan,'' ''qualifying master netting agreement,'' and ''repo-style transaction'' in the agencies' regulatory capital rules and ''qualifying master netting agreement'' in the agencies' LCR rules to ensure that the regulatory capital, liquidity, and lending limits treatment of OTC derivatives, repo-style transactions, eligible margin loans, and other collateralized transactions would be unaffected by the adoption of various foreign special resolution regimes and the ISDA Protocol. In particular, the interim final rule amends these definitions to provide that a relevant netting agreement or collateral agreement may provide for a limited stay or avoidance of rights where the agreement is subject by its terms to, or incorporates, certain resolution regimes applicable to financial companies, including Title II of the Dodd-Frank Act, the FDI Act, or any similar foreign resolution regime that provides for limited stays substantially similar to the stay for qualified financial contracts provided in Title II of the Dodd-Frank Act or the FDI Act.

In determining whether the laws of foreign jurisdictions are ''similar'' to the FDI Act and Title II of the Dodd-Frank Act and provide for limited stays substantially similar to those provided for in the FDI Act and Title II of the Dodd-Frank Act, the agencies intend to consider all aspects of the stays under the U.S. laws.[22] Relevant factors include, for instance, the length of stay and the related creditor safeguards or protections provided under a foreign special resolution regime.[23] The agencies expect that the implementation of special resolution regimes of France, Germany, Japan, Switzerland, and the United Kingdom would be substantially similar to those of the United States and provide for limited stays substantially similar to those provided for in the FDI Act and Title II of the Dodd-Frank Act.[24]

Without the interim final rule, several banking organizations would no longer be permitted to recognize financial contracts as subject to a qualifying master netting agreement or satisfying the criteria necessary for the current regulatory capital, liquidity, and lending limits treatment, and would be required to measure exposure from these contracts on a gross, rather than net, basis. This result would undermine the salutary effects of the BRRD and similar resolution regimes and the ISDA Protocol on financial stability. The interim final rule is necessary to maintain the existing treatment for these contracts for purposes of the regulatory capital, liquidity, and lending limits rules. The agencies do not believe that the disqualification of master netting agreements that would otherwise result in the absence of the interim final rule accurately reflects the risk posed by these OTC derivative transactions. Implementation of consistent, national resolution regimes on a global basis furthers the orderly resolution of internationally active financial companies, and enhances financial stability. Moreover, the development of the ISDA Protocol furthers the principles of Title II of the Dodd-Frank Act and the FDI Act (in instances where a counterparty is a U.S. entity or its subsidiary) by applying limited stays of termination rights to counterparties who are not otherwise subject to U.S. law.

In addition, the agencies intend to incorporate the definition of ''qualifying master netting agreement'' set forth in this interim final rule into rules that establish minimum margin requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants (covered swap entities) subject to agency supervision. On September 24, 2014, the OCC, Board, Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency published a notice of proposed rulemaking that would establish minimum margin requirements for covered swap entities subject to agency supervision (2014 swap margin NPR).[25] The proposed rule would permit a covered swap entity to calculate variation margin requirements on an aggregate, net basis under an eligible master netting agreement (EMNA) with a counterparty. The comment period for the 2014 swap margin NPR closed on November 24, 2014. The OCC, Board, Federal Deposit Insurance Corporation, Farm Credit Administration and Federal Housing Finance Agency are reviewing the comments received and drafting a final rule. Ultimately, the Federal banking agencies intend to align the definitions of EMNA and qualifying master netting agreement in their respective regulations pertaining to swap margin requirements, regulatory capital requirements, liquidity requirements, and lending limits.

## IV. Request for Comments

The agencies are interested in receiving comments on all aspects of the interim final rule. In particular, do the amendments to the definitions of

[20] The agencies' LCR rules will be codified at 12 CFR part 50 (OCC) and 12 CFR part 249 (Board).

[21] See 12 CFR __ .32(c) and __ .33(b) of the agencies' LCR rule. The LCR final rule provides that foreign currency transactions that meet certain criteria can be netted regardless of whether those transactions are covered by a qualified master netting agreement. 79 FR 61440, 61532–33 (October 10, 2014).

[22] See 12 U.S.C. 1821(e)(8)–(13) and 5390(c)(8)–(16). As noted above, the ISDA Protocol covers only resolution regimes that are considered to be consistent with the principles of the Key Attributes. Therefore, it is also expected that any limited statutory stay under foreign law determined for purposes of this interim final rule to be similar to the FDI Act and Title II of the Dodd-Frank Act would also be consistent with the relevant principles of the Key Attributes.

[23] Under Title II of the Dodd-Frank Act, counterparties are stayed until 5:00 p.m. on the business day following the date of appointment of a receiver from exercising termination, liquidation, or netting rights under the qualified financial contract. 12 U.S.C. 5390(c)(10)(B)(i)(I). If the qualified financial contracts are transferred to a solvent third party before the stay expires, the counterparty is permanently enjoined from exercising such rights based upon the appointment of the receiver, but is not stayed from exercising such rights based upon other events of default. See 12 U.S.C. 5390(c)(10)(B)(i)(II).

[24] Annexes to the ISDA Protocol specify conditions that the special resolution regimes of the five countries must meet in order for section 1(a) of the ISDA Protocol to apply to the ISDA Master Agreements of adhering parties.

[25] 79 FR 57348 (September 24, 2014).

''qualifying master netting agreement,'' ''collateral agreement,'' ''repo-style transaction,'' and ''eligible margin loan'' ensure that the regulatory capital, liquidity, and lending limits treatment of OTC derivatives, repo-style transactions, eligible margin loans and other collateralized transactions is unaffected by the ISDA Protocol and the BRRD? Is there any reason why the agencies should not revise the above mentioned definitions?

The ISDA Protocol also provides for limited stays of termination rights for cross-defaults resulting from affiliate insolvency proceedings under a limited number of U.S. general insolvency regimes, including the U.S. Bankruptcy Code.[26] The interim final rule does not address this portion of the ISDA Protocol because this portion of the ISDA Protocol does not take effect on January 1, 2015. Instead, it takes effect upon the effective date of implementing regulations in the United States. The agencies request comment on whether the definitions of ''qualifying master netting agreement,'' ''collateral agreement,'' ''repo-style transaction,'' and ''eligible margin loan'' should also be amended to recognize the stay of default rights in this context.

## V. Effective Date; Solicitation of Comments

This interim final rule is effective January 1, 2015. Pursuant to the Administrative Procedure Act (APA), at 5 U.S.C. 553(b)(B), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[27] Similarly, a final rule may be published with an immediate effective date if an agency finds good cause and publishes such with the final rule.[28]

The ISDA Protocol was published by ISDA on November 4, 2014, and as of November 12, 2014, 18 large banking organizations, including five large U.S. banking organizations, have voluntarily adhered to the ISDA Protocol, which will become effective on January 1, 2015. Upon the effective date of the ISDA Protocol, the ISDA Master Agreements entered into between the adhering banking organizations would be disqualified from recognition as transactions subject to a qualifying master netting agreement.

The BRRD was adopted on April 15, 2014.[29] Implementation of the BRRD by a number of EU member states is expected to occur by January 1, 2015. Becoming subject to the limited stays contemplated by the BRRD also disqualifies agreements that would otherwise qualify as a qualifying master netting agreement or a collateral agreement, and disqualifies securities financing transactions or margin loans from the regulatory capital treatment of a repo-style transaction or eligible margin loan, respectively. Adoption of this interim final rule, in conjunction with the implementation of the BRRD and the ISDA Protocol by relevant foreign jurisdictions is consistent with steps to facilitate the orderly resolution of systemically important financial institutions.

Changes to the definitions of qualifying master netting agreement, repo-style transaction, eligible margin loan and collateral agreement are needed to ensure that contractually subjecting netting and collateral agreements, agreements executing a repo-style transaction and agreements executing an eligible margin loan to domestic and foreign special resolution regimes does not disrupt current treatment under the agencies' regulatory capital, liquidity, and lending limits rules. Notice and comment through the issuance of a notice of proposed rulemaking for purposes of these amendments would extend beyond January 1, 2015, resulting in adverse financial consequences to some U.S. banking organizations.

The agencies find that, under these circumstances, prior notice and comment through the issuance of a notice of proposed rulemaking are impracticable and that the public interest is best served by making the rule effective on January 1, 2015. Otherwise, banking organizations could be subject to considerably higher capital and liquidity requirements because the regulatory capital and liquidity rules would not recognize netting under the relevant agreements or the current treatment of such contracts. Moreover, under the OCC's legal lending limits for national banks and Federal savings association, which rely on the definition of qualifying master netting agreement, the legal lending limits of those institutions may be significantly reduced. These outcomes could weaken liquidity in OTC derivatives markets, increase the cost of credit, and reduce the availability of credit.

National implementation of the BRRD and adherence to the ISDA Protocol should facilitate the orderly resolution of internationally active banking organizations. Absent capital and liquidity treatment and legal lending limits (where applicable) afforded to counterparties entering into a qualifying master netting agreement, banking organizations would be dis-incentivized to enter into such agreements.

For these reasons, with respect to the amendments to the definitions of qualifying master netting agreement, collateral agreement, repo-style transaction, and eligible margin loan, the agencies find good cause to dispense with the delayed effective date otherwise required by 5 U.S.C. 553(b)(B) and 553(d)(3) and under section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4802.[30]

## VI. Regulatory Analysis

### *A. Regulatory Flexibility Act Analysis*

*OCC:* The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the OCC has determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

*Board:* The requirements of the RFA are not applicable to this interim final rule.[31] Nonetheless, the Board observes that the interim final rule would not have a significant economic impact on a substantial number of small entities. The Board requests comment on its conclusion that the new interim final rule should not have a significant economic impact on a substantial number of small entities.

To support the above finding that the interim final rule would not have a significant economic impact on a substantial number of small entities, the

[26] Under the ISDA Protocol, upon commencement of such proceedings, adhering counterparties would be subject to a limited stay of their termination rights and other remedies. The limited stay does not apply if a direct counterparty is subject to general insolvency proceedings. The stay also does not apply to payment or delivery defaults or to defaults that are not directly or indirectly related to the affiliate insolvency proceedings.

[27] 5 U.S.C. 553(b)(B).

[28] 5 U.S.C. 553(d)(3).

[29] The United Kingdom published a consultative paper in July 2014 regarding the implementation of the BRRD.

[30] The RCDRIA requires that, subject to certain exceptions, regulations imposing additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of the calendar quarter after publication of the final rule. This effective date requirement does not apply if the agency finds for good cause that the regulation should become effective before such time.

[31] The requirements of the RFA are not applicable to rules adopted under the Administrative Procedure Act's ''good cause'' exception, see 5 U.S.C. 601(2) (defining ''rule'' and notice requirements under the Administrative Procedure Act).

Board is publishing a final regulatory flexibility analysis for the interim final rule. The RFA generally requires an agency to assess the impact a rule is expected to have on small entities.[32] The RFA requires an agency either to provide a regulatory flexibility analysis or to certify that the interim final rule will not have a significant economic impact on a substantial number of small entities. Based on this analysis and for the reasons stated below, the Board believes that this interim final rule will not have a significant economic impact on a substantial number of small entities.

Under regulations issued by the U.S. Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less (a small banking organization).[33] As of June 30, 2014, there were approximately 657 small state member banks, 3,719 small bank holding companies, and 254 small savings and loan holding companies.

The interim final rule is expected only to apply to banking organizations that adhere to the ISDA Protocol or engage in a substantial amount of cross-border derivatives transactions. Small entities generally will not fall into this category. To date, the Board is aware of less than two dozen banking organizations, all with total consolidated assets greater than $250 billion, that are likely to adhere to the ISDA Protocol or engage in a substantial amount of cross-border derivatives transactions. The Board is aware of no other Federal rules that duplicate, overlap, or conflict with this interim final rule. The Board believes that this interim final rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the interim final rule that would reduce the economic impact on small banking organizations supervised by the Board.

[32] Under standards the U.S. Small Business Administration has established, an entity is considered ''small'' if it has $175 million or less in assets for banks and other depository institutions. U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[33] See 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to $550 million in assets from $500 million in assets. 79 FR 33647 (June 12, 2014).

*B. Solicitation of Comments on Use of Plain Language*

Section 722 of the Gramm-Leach-Bliley Act requires the agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies invite comment on how to make this interim final rule easier to understand. For example:

- Have the agencies organized the material to suit your needs? If not, how could the rule be more clearly stated?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes would make the rule easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could the agencies do to make the rule easier to understand?

*C. Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (''PRA''), the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. The agencies reviewed the interim final rule and determined that it would not produce any new collection of information pursuant to the PRA.

**List of Subjects**

*12 CFR Part 3*

Administrative practice and procedure; Capital; National banks, Reporting and recordkeeping requirements; Risk.

*12 CFR Part 50*

Administrative practice and procedure; Banks, banking; Liquidity; Reporting and recordkeeping requirements; Savings associations.

*12 CFR Part 217*

Administrative practice and procedure; Banks, banking; Capital; Federal Reserve System; Holding companies; Reporting and recordkeeping requirements; Securities.

*12 CFR Part 249*

Administrative practice and procedure; Banks, banking; Federal Reserve System; Holding companies; Liquidity; Reporting and recordkeeping requirements.

**Department of the Treasury**

*Office of the Comptroller of the Currency*

**12 CFR Chapter I**

**Authority and Issuance**

For the reasons set forth in the supplementary information, the Office of the Comptroller of the Currency amends part 3 of chapter I of title 12, Code of Federal Regulations as follows:

## PART 3—CAPITAL ADEQUACY STANDARDS

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

**Authority:** 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

**Part 3 [Amended]**

■ 1a. Part 3 is amended by redesignating footnotes 5 through 29 as footnotes 9 through 33, respectively.

■ 2. Section 3.2 is amended by:

■ a. Revising the definitions of ''collateral agreement'' and ''qualifying master netting agreement'';

■ b. Revising paragraph (1)(iii) of the definition of ''eligible margin loan'';

■ c. Republishing the introductory text of the definition of ''repo-style transaction''; and

■ d. Revising paragraph (3)(ii)(A) of the definition of ''repo-style transaction''.

The revisions are set forth below:

**§ 3.2 Definitions.**

* * * * *

*Collateral agreement* means a legal contract that specifies the time when, and circumstances under which, a counterparty is required to pledge collateral to a national bank or Federal savings association for a single financial contract or for all financial contracts in a netting set and confers upon the national bank or Federal savings association a perfected, first-priority security interest (notwithstanding the prior security interest of any custodial agent), or the legal equivalent thereof, in the collateral posted by the counterparty under the agreement. This security interest must provide the national bank or Federal savings association with a right to close-out the financial positions and liquidate the collateral upon an event of default of, or failure to perform by, the counterparty under the collateral agreement. A contract would not satisfy this requirement if the national bank's or Federal savings association's exercise of rights under the agreement may be

stayed or avoided under applicable law in the relevant jurisdictions, other than:

(1) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [4] to the U.S. laws referenced in this paragraph (1) in order to facilitate the orderly resolution of the defaulting counterparty; or

(2) Where the agreement is subject by its terms to any of the laws referenced in paragraph (1) of this definition.

* * * * *

*Eligible margin loan* means:

(1) * * *

(iii) The extension of credit is conducted under an agreement that provides the national bank or Federal savings association the right to accelerate and terminate the extension of credit and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, conservatorship, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs,[5] or laws of foreign jurisdictions that are substantially similar [6] to the U.S. laws referenced in this paragraph in order to facilitate the orderly resolution of the defaulting counterparty; or

* * * * *

*Qualifying master netting agreement* means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the national bank or Federal savings association the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [7] to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty; or

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, a national bank or Federal savings association must comply with the requirements of § 3.3(d) with respect to that agreement.

* * * * *

*Repo-style transaction* means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the national bank or Federal savings association acts as agent for a customer and indemnifies the customer against loss, provided that:

* * * * *

(3) * * *

(ii) * * *

(A) The transaction is executed under an agreement that provides the national bank or Federal savings association the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [8] to the U.S. laws referenced in this paragraph (3)(ii)(a) in order to facilitate the orderly resolution of the defaulting counterparty; or

* * * * *

## PART 50—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 3. The authority citation for part 50 continues to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*, 93a, 481, 1818, and 1462 *et seq.*

■ 4. Section 50.3 is amended by:

■ a. Revising the definition of ''qualifying master netting agreement''; and

■ b. In paragraph (2) of the definition of ''regulated financial company'', redesignating footnote 1 as footnote 2.

The revision is set forth below.

### § 50.3 Definitions.

* * * * *

*Qualifying master netting agreement* means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the national bank or Federal savings association the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided

[4] The OCC expects to evaluate jointly with the Board and FDIC whether foreign special resolution regimes meet the requirements of this paragraph.

[5] This requirement is met where all transactions under the agreement are (i) executed under U.S. law and (ii) constitute ''securities contracts'' under section 555 of the Bankruptcy Code (11 U.S.C. 555), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act, or netting contracts between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve Board's Regulation EE (12 CFR part 231).

[6] The OCC expects to evaluate jointly with the Board and FDIC whether foreign special resolution regimes meet the requirements of this paragraph.

[7] The OCC expects to evaluate jointly with the Board and FDIC whether foreign special resolution regimes meet the requirements of this paragraph.

[8] The OCC expects to evaluate jointly with the Board and FDIC whether foreign special resolution regimes meet the requirements of this paragraph.

under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [1] to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty; or

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, a national bank or Federal savings association must comply with the requirements of § 50.4(a) with respect to that agreement.

* * * * *

**Board of Governors of the Federal Reserve System**

**12 CFR Chapter II**

**Authority and Issuance**

For the reasons set forth in the supplementary information, the Board amends 12 CFR Chapter II parts 217 and 249 to read as follows:

## PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 5. The authority citation for part 217 continues to read as follows:

**Authority:** 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

**Part 217 [Amended]**

■ 5a. Part 217 is amended by redesignating footnotes 5 through 29 as footnotes 9 through 33, respectively.

■ 6. Section 217.2 is amended by:

■ a. Revising the definitions of ''collateral agreement'' and ''qualifying master netting agreement'';

■ b. Revising paragraph (1)(iii) of the definition of ''eligible margin loan'';

■ c. Republishing the introductory text of the definition of ''repo-style transaction''; and

■ d. Revising paragraph (3)(ii)(A) of the definition of ''repo-style transaction''.

The revisions are set forth below:

**§ 217.2 Definitions.**

* * * * *

*Collateral agreement* means a legal contract that specifies the time when, and circumstances under which, a counterparty is required to pledge collateral to a Board-regulated institution for a single financial contract or for all financial contracts in a netting set and confers upon the Board-regulated institution a perfected, first-priority security interest (notwithstanding the prior security interest of any custodial agent), or the legal equivalent thereof, in the collateral posted by the counterparty under the agreement. This security interest must provide the Board-regulated institution with a right to close-out the financial positions and liquidate the collateral upon an event of default of, or failure to perform by, the counterparty under the collateral agreement. A contract would not satisfy this requirement if the Board-regulated institution's exercise of rights under the agreement may be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(1) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [4] to the U.S. laws referenced in this paragraph (1) in order to facilitate the orderly resolution of the defaulting counterparty; or

(2) Where the agreement is subject by its terms to any of the laws referenced in paragraph (1) of this definition.

* * * * *

*Eligible margin loan* means:

(1) * * *

(iii) The extension of credit is conducted under an agreement that provides the Board-regulated institution the right to accelerate and terminate the extension of credit and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, conservatorship, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs,[5] or laws of foreign jurisdictions that are substantially similar [6] to the U.S. laws referenced in this paragraph in order to facilitate the orderly resolution of the defaulting counterparty; or

* * * * *

*Qualifying master netting agreement* means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the Board-regulated institution the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [7] to the U.S. laws referenced in this paragraph (2)(i) in

[1] The OCC expects to evaluate jointly with the Board and FDIC whether foreign special resolution regimes meet the requirements of this paragraph.

[4] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

[5] This requirement is met where all transactions under the agreement are (i) executed under U.S. law and (ii) constitute ''securities contracts'' under section 555 of the Bankruptcy Code (11 U.S.C. 555), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act, or netting contracts between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve Board's Regulation EE (12 CFR part 231).

[6] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

[7] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

order to facilitate the orderly resolution of the defaulting counterparty; or

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, a Board-regulated institution must comply with the requirements of § 217.3(d) with respect to that agreement.

* * * * *

*Repo-style transaction* means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the Board-regulated institution acts as agent for a customer and indemnifies the customer against loss, provided that:

(3) * * *

(ii) * * *

(A) The transaction is executed under an agreement that provides the Board-regulated institution the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [8] to the U.S. laws referenced in this paragraph (3)(ii)(a) in order to facilitate the orderly resolution of the defaulting counterparty; or

* * * * *

[8] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

## PART 249—LIQUIDITY RISK MEASUREMENT STANDARDS (REGULATION WW)

■ 7. The authority citation for part 249 continues to read as follows:

**Authority:** 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368.

■ 8. Section 249.3 is amended by:

■ a. Revising the definition of ''qualifying master netting agreement''; and

■ b. In paragraph (2) of the definition of ''regulated financial company'', redesignating footnote 1 as footnote 2.

### § 249.3 Definitions.

* * * * *

*Qualifying master netting agreement* means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the Board-regulated institution the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [1] to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty; or

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, a Board-regulated institution must comply with the requirements of § 249.4(a) with respect to that agreement.

* * * * *

Dated: December 16, 2014.

**Thomas J. Curry,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, December 16, 2014.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2014–30218 Filed 12–29–14; 8:45 am]

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[1] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

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## DEPARTMENT OF THE TREASURY

## Office of the Comptroller of the Currency

## 12 CFR Part 34

**[Docket No. OCC–2014–0027]**

**RIN 1557–AD90**

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

## 12 CFR Part 226

**[Docket No. R–1443]**

**RIN 7100–AD 90**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

## 12 CFR Part 1026

**RIN 3170–AA11**

## Appraisals for Higher-Priced Mortgage Loans Exemption Threshold Adjustment—Final Rule

**AGENCY:** Board of Governors of the Federal Reserve System (Board); Bureau of Consumer Financial Protection (Bureau); and Office of the Comptroller of the Currency, Treasury (OCC).

**ACTION:** Final rule; official staff interpretations; technical amendment.

**SUMMARY:** The OCC, the Board and the Bureau are publishing final rules amending the official staff interpretations for their regulations that implement section 129H of the Truth in Lending Act (TILA). Section 129H of TILA establishes special appraisal requirements for ''higher-risk

mortgages,'' termed ''higher-priced mortgages'' or ''HPMLs'' in the agencies' regulations. The OCC, the Board, the Bureau, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA) and the Federal Housing Finance Agency (FHFA) (collectively, the Agencies) issued joint final rules implementing these requirements, effective January 18, 2014. The Agencies' rules exempted, among other loan types, transactions of $25,000 or less, and required that this loan amount be adjusted annually based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Based on the annual percentage increase in the CPI–W as of June 1, 2014, the OCC, the Board and the Bureau are adjusting the exemption threshold to $25,500, effective January 1, 2015.

**DATES:** This final rule is effective January 1, 2015.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Beth Knickerbocker, Counsel, Legislative & Regulatory Activities Division, at (202) 649–5490; for persons who are deaf and hard of hearing, TTY, (202) 649–5597.

*Board:* Lorna M. Neill, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

*Bureau:* James Wylie, Counsel, Office of Regulations, Bureau of Consumer Financial Protection, at (202) 435–7700.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amended the Truth in Lending Act (TILA) to add special appraisal requirements for ''higher-risk mortgages.'' [1] In January 2013, the Agencies issued a joint final rule implementing these requirements and adopted the term ''higher-priced mortgage loan'' (HPML) instead of ''higher-risk mortgage'' (the January 2013 Final Rule).[2] In December 2013, the Agencies issued a supplemental final rule with additional exemptions from the January 2013 Final Rule (the December 2013 Supplemental Final Rule).[3] Among other exemptions, the Agencies adopted an exemption from the new HPML appraisal rules for transactions of $25,000 or less, to be adjusted annually for inflation.

The Bureau's, the OCC's, and the Board's versions of the January 2013 Final Rule and December 2013 Supplemental Final Rule and corresponding official interpretations are substantively identical. The FDIC, NCUA, and FHFA adopted the Bureau's version of the regulations under the January 2013 Final Rule and December 2013 Supplemental Final Rule.[4]

Section 34.203(b)(2) of Subpart G of part 34 of the OCC's regulations, § 226.43(b)(2) of the Board's Regulation Z, and § 1026.35(c)(2)(ii) of the Bureau's Regulation Z, and their accompanying interpretations, provide that the exemption threshold for smaller loans will be adjusted effective January 1 of each year based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.[5]

## II. Adjustment and Commentary Revision

Effective January 1, 2015, the adjusted exemption threshold amount is $25,500. This adjustment is based on the CPI–W index in effect on June 1, 2014, which was reported on May 15, 2014. The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of the month. The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 28 percent of the U.S. population. The adjustment reflects a 2 percent increase in the CPI–W from April 2013 to April 2014. Accordingly, the OCC, the Board, and the Bureau are revising the interpretations to their respective regulations to add new comments as follows:

- Comment 203(b)(2)–1.ii to 12 CFR part 34, Appendix C to Subpart G (OCC);
- Comment 43(b)(2)–1.ii to Supplement I of 12 CFR part 226 (Board); and
- Comment 35(c)(2)(ii)–1.ii in Supplement I of 12 CFR part 1026 (Bureau).

These new comments state that, from January 1, 2015 through December 31, 2015, the threshold amount is $25,500. These revisions are effective January 1, 2015.

## III. Administrative Law Matters

### *Administrative Procedure Act*

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if an agency finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[6] This annual adjustment is required by the December 2013 Supplemental Final Rule. The amendment in this notice is technical and non-discretionary, and it applies the method previously established, through notice and comment, in the Agencies' regulations for determining adjustments to the exemption threshold. For these reasons, the OCC, the Board and the Bureau have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

The effective date of this final rule is January 1, 2015. Under the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule.[7] Because this rule adjusts the exemption threshold consistent with the procedural requirements of the official staff interpretations, the OCC, the Board and the Bureau conclude that it is not substantive within the meaning of the APA's delayed effective date provision. Moreover, the agencies find that there is good cause for dispensing with the delayed effective date requirement, even if it applied, because their current rules already provide notice that the exemption threshold will be adjusted effective January 1 based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1.

[1] Public Law 111–203 section 1471, 124 Stat. 1376 (2010), codified at TILA section 129H, 15 U.S.C. 1639h.

[2] 78 FR 10368 (Feb. 13, 2013).

[3] 78 FR 78520 (Dec. 26, 2013)

[4] *See* NCUA: 12 CFR 722.3; FHFA: 12 CFR part 1222. Although the FDIC adopted the Bureau's version of the regulation, the FDIC did not issue its own regulation containing a cross-reference to the Bureau's version. *See* 78 FR 10368, 10370 (Feb. 13, 2013).

[5] *See* 12 CFR part 34, Appendix C to Subpart G, comment 203(b)(2)–1 (OCC); 12 CFR part 226, Supplement I, comment 43(b)(2)–1 (Board); and 12 CFR part 1026, Supplement I, comment 35(c)(2)(ii)–1 (Bureau).

[6] 5 U.S.C. 553(b)(B).

[7] 5 U.S.C. 553(d)(3).

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[8] As noted previously, the agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

*Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995,[9] the agencies reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

*Unfunded Mandates Reform Act*

The OCC analyzes proposed rules for the factors listed in Section 202 of the Unfunded Mandates Reform Act of 1995, before promulgating a final rule for which a general notice of proposed rulemaking was published.[10] As discussed above, the OCC had determined that the publication of a general notice of proposed rulemaking is unnecessary.

**List of Subjects**

*12 CFR Part 34*

Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

*12 CFR Part 226*

Advertising, Appraisal, Appraiser, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

*12 CFR Part 1026*

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

**Department of the Treasury**

*Office of the Comptroller of the Currency*

**Authority and Issuance**

For the reasons set forth in the preamble, the OCC amends 12 CFR part 34 as set forth below:

[8] 5 U.S.C. 603 and 604.

[9] 44 U.S.C. 3506; 5 CFR 1320.

[10] 2 U.S.C. 1532.

## PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 1. The authority citation for part 34 continues to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1463, 1464, 1465,1701j–3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* 5412(b)(2)(B) and 15 U.S.C. 1639h.

### Subpart G—Appraisals for Higher-Priced Mortgage Loans

■ 2. In Appendix C to Subpart G, under *Section 34.203—Appraisals for Higher-Priced Mortgage Loans,* paragraph 34.203(b)(2)–1.ii is added to read as follows:

**Appendix C to Subpart G—OCC Interpretations**

* * * * *

*Section 34.203—Appraisals for Higher-Priced Mortgage Loans*

* * * * *

34.203(b) Exemptions

* * * * *

Paragraph 34.203(b)(2)

1. *Threshold amount.* * * *

ii. From January 1, 2015 through December 31, 2015, the threshold amount is $25,500.

* * * * *

**Board of Governors of the Federal Reserve System**

**Authority and Issuance**

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

## PART 226—TRUTH IN LENDING (REGULATION Z)

■ 3. The authority citation for part 226 continues to read as follows:

**Authority:** 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), 1639(l), and 1639h; Pub. L. 111–24 § 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

### Subpart A—General

■ 4. In Supplement I to part 226, under *Section 226.43—Appraisals for Higher-Priced Mortgage Loans,* under Paragraph 43(b)(2), paragraph 43(b)(2)–1.ii is added to read as follows:

**Supplement I to Part 226—Official Staff Interpretations**

* * * * *

**Subpart E—Special Rules for Certain Home Mortgage Transactions**

* * * * *

*Section 226.43—Appraisals for Higher-Priced Mortgage Loans*

* * * * *

43(b) Exemptions

* * * * *

Paragraph 43(b)(2)

1. *Threshold amount.* * * *

ii. From January 1, 2015 through December 31, 2015, the threshold amount is $25,500.

* * * * *

**Bureau of Consumer Financial Protection**

**Authority and Issuance**

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

## PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 5. The authority citation for part 1026 continues to read as follows:

**Authority:** 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 6. In Supplement I to part 1026, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans,* under Paragraph 35(c)(2)(ii), paragraph 35(c)(2)(ii)–1.ii is added to read as follows:

**Supplement I to Part 1026—Official Interpretations**

* * * * *

**Subpart E—Special Rules for Certain Home Mortgage Transactions**

* * * * *

*Section 1026.35—Requirements for Higher-Priced Mortgage Loans*

* * * * *

35(c) Appraisals

* * * * *

35(c)(2) Exemptions

* * * * *

Paragraph 35(c)(2)(ii)

1. *Threshold amount.* * * *

ii. From January 1, 2015 through December 31, 2015, the threshold amount is $25,500.

* * * * *

Dated: December 11, 2014.

**Amy Friend,**

*Senior Deputy Comptroller and Chief Counsel.*

By order of the Board of Governors of the Federal Reserve System, acting through the

Secretary of the Board under delegated authority, December 19, 2014.

**Robert deV. Frierson,**

*Secretary of the Board.*

Dated: December 18, 2014.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

[FR Doc. 2014–30419 Filed 12–29–14; 8:45 am]

**BILLING CODE 4810–33–P; 6210–01–P; 4810–AM–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 91

**[Docket No. FAA–2014–0708; Amendment No. 91–334; SFAR No. 114]**

**RIN 2120–AK61**

## Prohibition Against Certain Flights Within the Damascus (OSTT) Flight Information Region (FIR)

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

**ACTION:** Immediately adopted final rule.

**SUMMARY:** This action prohibits certain flight operations in the Damascus (OSTT) Flight Information Region (FIR) by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA previously prohibited such flight operations in a Notice to Airmen (NOTAM) 4/4936, which was issued on August 18, 2014, and absent this rule, would have remained in effect until December 31, 2014. This Special Federal Aviation Regulation (SFAR) adopts the prohibitions currently in effect via the NOTAM, and requires compliance with the prohibitions for 2 years from the date of publication of this final rule, unless the FAA determines that it is necessary to amend or rescind this rule based on the situation in the region. The FAA finds that this action is necessary to address a potential hazard to persons and aircraft engaged in such flight operations.

**DATES:** This final rule is effective on December 30, 2014, and remains in effect through December 30, 2016.

**FOR FURTHER INFORMATION CONTACT:** For technical questions about this action, contact Will Gonzalez, Air Transportation Division, AFS–220, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8166; email: *will.gonzalez@faa.gov.*

For legal questions concerning this action, contact: Robert Frenzel, Office of the Chief Counsel, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7638.

**SUPPLEMENTARY INFORMATION:**

### Good Cause for Immediate Adoption

Section 553(b)(3)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' In this instance, the FAA finds that notice and public comment to this immediately adopted final rule, as well as any delay in the effective date of this rule, are contrary to the public interest due to the immediate need to address the potential hazard to civil aviation that exists in the OSTT FIR, as described in the Background section of this final rule.

### Authority for This Rulemaking

The FAA is responsible for the safety of flight in the United States and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. The FAA's authority to issue rules on aviation safety is found in title 49 of the U.S. Code. Subtitle I, section 106(f), describes the authority of the FAA Administrator. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the U.S. Government under international agreements.

This SFAR is promulgated under the authority described in Title 49, Subtitle VII, Part A, Subpart III, section 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of that authority because it prohibits certain flight operations in the OSTT FIR due to the potential hazard to persons and aircraft engaged in such flight operations that is described in the ''Background'' section of this final rule.

### I. Overview of Immediately Adopted Final Rule

This action prohibits certain flight operations in the OSTT FIR, by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA previously prohibited such flight operations in FDC NOTAM 4/4936, which was issued on August 18, 2014. This action incorporates that prohibition into the Code of Federal Regulations (CFR). The FAA finds this action necessary to address a potential hazard to persons and aircraft engaged in such flight operations, as described below.

### II. Background

Due to the ongoing armed conflict and volatile security environment in Syria, the FAA has serious concerns regarding potential hazards to U.S. civil flight operations in the OSTT FIR. A number of armed extremist groups are known to be equipped with a variety of anti-aircraft weapons that have the capability to threaten civil aircraft. These groups have successfully shot down Syrian military aircraft and have previously warned civil air carriers against providing service to Syria. Due to the presence of these weapons, threats made by the extremist groups, and ongoing fighting throughout Syria involving various forms of weaponry used by various groups, as well as military fighter aircraft used by the Syrian Air Force, the FAA believes there is a significant threat to U.S. civil aviation operating in the OSTT FIR at any altitude.

On August 18, 2014, in response to the potentially hazardous situation created by the armed conflict in Syria, the FAA issued FDC NOTAM 4/4936, which prohibited flight operations in the OSTT FIR by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. In addition, on September 23, 2014, the President announced that U.S. and allied forces had begun airstrikes against the Islamic State in

Iraq and the Levant (ISIL) targets in Syria and that U.S. forces had also conducted airstrikes to disrupt plotting against the U.S. and its allies by the Khorasan Group. These airstrikes represent a further hazard to U.S. civil aviation operations in the OSTT FIR. This rulemaking incorporates the flight prohibition contained in FDC NOTAM 4/4936 into the CFR.

The FAA will continue to actively evaluate the situation to determine to what extent U.S. civil operators may be able to safely operate in the OSTT FIR. Amendments to this SFAR No. 114, § 91.1609, may be appropriate if the risk to aviation safety and security changes. Thus, the FAA may amend or rescind this SFAR No. 114, § 91.1609, as necessary prior to its expiration date.

Because the circumstances described herein warrant immediate action by the FAA, I find that notice and public comment under 5 U.S.C. 553(b)(3)(B) are impracticable and contrary to the public interest. Further, I find that good cause exists under 5 U.S.C. 553(d)(3) for making this rule effective immediately upon publication. I also find that this action is fully consistent with the obligations under 49 U.S.C. 40105 to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

*Approval Based on Authorization Request of an Agency of the United States Government*

If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person covered under this final rule, including any U.S. air carrier or U.S. commercial operator, to conduct a charter to transport civilian or military passengers or cargo, that department, agency, or instrumentality may request the FAA to approve persons covered under this SFAR No. 114, § 91.1609, to conduct such operations. An approval request must be made to the FAA in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality of the U.S. Government. The letter must be sent to the Associate Administrator for Aviation Safety (AVS–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the approval request is granted. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267–8166, to obtain the appropriate email address. A single letter may request approval from the FAA for multiple persons covered under this SFAR No. 114, § 91.1609 and/or for multiple flight operations. To the extent known, the letter must identify the person(s) expected to be covered under this SFAR No. 114, § 91.1609 and on whose behalf the U.S. Government department, agency, or instrumentality is seeking FAA approval to conduct operations in the OSTT FIR. The letter must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service to be provided by the person(s) covered by this SFAR No. 114, § 91.1609;
- To the extent known, the specific locations in the OSTT FIR where the proposed operation(s) will be conducted; and
- The method by which the department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (*e.g.,* pre-mission planning and briefing, in-flight, and post-flight).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or its prime contractor has a subcontract(s)) for specific flight operations in the OSTT FIR. Additionally, such operators may be identified to the FAA at any time after the FAA approval is issued. Updated lists should be sent to the email address to be obtained from the Air Transportation Division, (202) 267–8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspector Will Gonzalez for instructions on submitting it to the FAA. His contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

FAA approval of an operation under this SFAR No. 114, § 91.1609, does not relieve persons subject to this SFAR of their responsibility to comply with all applicable FAA rules and regulations. Operators of civil aircraft must comply with the conditions of their certificates and Operations Specifications (OpSpecs). Operators must also comply with all rules and regulations of other U.S. Government departments or agencies that may apply to the proposed operations, including, but not limited to, the Transportation Security Regulations issued by the Transportation Security Administration, Department of Homeland Security.

*Approval Conditions*

If the FAA approves the request, the FAA's Aviation Safety Organization (AVS) will send an approval letter to the requesting department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following:

(1) Any approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Any approval will indicate that the operation is not eligible for coverage under any premium war risk insurance policy issued by the FAA under chapter 443 of title 49, U.S. Code.[1] Each such policy excludes coverage for any aircraft operations that are intentionally conducted into or within geographic areas prohibited by an SFAR, such as this SFAR No. 114, § 91.1609. The exclusion specified in the policy will remain in effect as long as this SFAR No. 114, § 91.1609, remains in effect, notwithstanding the issuance of any approval under, or exemption from, this SFAR No. 114, § 91.1609 (the chapter 443 premium war risk insurance policy refers to such approval as a ''waiver'' and such exemption as an ''exclusion'').

(3) Before any approval takes effect, the operator must submit to the FAA a written release of the U.S. Government (including, but not limited to, the United States of America, as Insurer) from all damages, claims, and liabilities, including without limitation legal fees and expenses, and the operator's agreement to indemnify the U.S. Government (including, but not limited to, the United States of America, as Insurer) with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising from or related to the approved operations in the OSTT FIR. The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy issued by the FAA under chapter 443.

[1] If and when, in connection with an operator's contract with a department, agency, or instrumentality of the U.S. Government, an operation is covered by a non-premium war risk insurance policy issued by FAA under 49 U.S.C. 44305, coverage under that operator's FAA premium war risk insurance policy is suspended as a condition contained in that premium policy.

(4) Other conditions that the FAA may specify, including those that may be imposed in OpSpecs.

If the proposed operation or operations is or are approved, the FAA will issue OpSpecs to the certificate holder authorizing the operation or operations, and will notify the department, agency, or instrumentality that requested FAA approval of civil flight operations to be conducted by one or more persons described in paragraph (a) of this SFAR No. 114, § 91.1609, of any additional conditions beyond those contained in the approval letter. The requesting department, agency, or instrumentality must have a contract, grant, or cooperative agreement (or its prime contractor must have a subcontract) with the person(s) described in paragraph (a) of this SFAR No. 114, § 91.1609, on whose behalf the department, agency, or instrumentality requests FAA approval.

*Request for Exemptions*

Any operation not conducted under the approval process set forth above must be conducted under an exemption from this SFAR No. 114, § 91.1609. A request by any person covered under this SFAR for an exemption must comply with 14 CFR part 11, and will require exceptional circumstances beyond those contemplated by the approval process set forth above. In addition to the information required by 14 CFR 11.81, the requestor must describe in its submission to the FAA, at a minimum—

- The proposed operation(s), including the nature of the operation;
- The service to be provided by the person(s) covered by this SFAR No. 114, § 91.1609;
- The specific locations in the OSTT FIR where the proposed operation(s) will be conducted; and
- The method by which the operator will obtain current threat information, and an explanation of how the operator will integrate this information into all phases of its proposed operations (*e.g.,* the pre-mission planning and briefing, in-flight, and post-flight phases).

Additionally the release and agreement to indemnify, as referred to above, will be required as a condition of any exemption issued under this SFAR No. 114, § 91.1609. The FAA recognizes that operations that may be affected by this SFAR No. 114, § 91.1609, may be planned for the governments of other countries with the support of the U.S. Government. While these operations will not be permitted through the approval process, the FAA will process exemption requests for such operations on an expedited basis and prior to processing any private exemption requests.

## III. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 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 (Public Law 96–354), as codified in 5 U.S.C. 601 *et seq.,* requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Public Law 96–39, as amended, 19 U.S.C. Chapter 13), prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements 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 (Public Law 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 a base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

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

This SFAR No. 114, § 91.1609, prohibits flight operations by persons described in paragraph (a) in the OSTT FIR due to the significant hazards to civil aviation described in the Background section of this preamble. This regulation incorporates the prohibition on flight operations originally issued by the FAA in FDC NOTAM 4/4936 into the CFR. The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) prohibits, except as otherwise authorized, the exportation, re-exportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any services to Syria. *See* 31 CFR 542.207. Consequently, the FAA assumes that, immediately prior to the issuance of FDC NOTAM 4/4936 on August 18, 2014, there were few, if any, persons who would be subject to paragraph (a) of SFAR No. 114, § 91.1609, flying into and out of Syria. OFAC's Syrian Sanctions Regulations (31 CFR part 542) do not prohibit overflights of Syria. The FAA surveyed U.S. operators of large transport category airplanes (four part 121 operators and two part 125M operators) who had previously reported conducting regular overflights in the OSTT FIR. All six operators recently reported that they had voluntarily ended their OSTT FIR overflights in March 2011 due to the onset of hostilities in Syria. Thus, these six operators ceased their operations in the OSTT FIR before the FAA issued FDC NOTAM 4/4936 on August 18, 2014. Approximately 15 ''on-demand'' large carriers (part 121 and part 121/135) previously indicated that they had performed overflights in the OSTT FIR and about 75 small ''on-demand'' operators (parts 135, 125, 125M, and 91K) previously indicated that they had flown into and out of Syria or conducted overflights in the OSTT FIR. However, because of the OFAC sanctions and the ongoing conflict, the FAA believes that few, if any, of these small operators were operating in the OSTT FIR immediately prior to the issuance of FDC NOTAM 4/4936 on August 18, 2014. Accordingly, the incremental costs of this rule are minimal.

In conducting these analyses, FAA has determined this final rule is a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866, because it raises novel policy issues contemplated under that Executive Order. The rule is also ''significant'' as defined in DOT's Regulatory Policies and Procedures. The final rule, if adopted, will not have a significant economic impact on a substantial number of small entities, will not create unnecessary obstacles to international trade, and will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

*A. Regulatory Flexibility Analysis*

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, ''RFA''), 5 U.S.C. 601 *et seq.,* 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, RFA § 605(b) provides that the head of the agency may so certify and a regulatory flexibility analysis will not be required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As noted above, because of OFAC sanctions and the ongoing conflict, as well as the voluntary cessation of operations by large transport category carriers, the FAA believes that few, if any, small U.S. operators operated in the OSTT FIR prior to the issuance of FDC NOTAM 4/4936. The FAA believes all operators who are small entities do not intend to land or overfly Syria while this rule is in effect. Therefore, as provided in § 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

*B. International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96–39. 19 U.S.C. Chapter 13), as amended, prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from a potential hazard outside the U.S. Therefore, the rule is in compliance with the Trade Agreements Act, as amended.

*C. Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $151.0 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

*D. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3501 *et seq.*) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this immediately adopted final rule.

*E. International Compatibility and Cooperation*

In keeping with U.S. obligations under the Convention on International Civil Aviation (the ''Chicago Convention''), it is FAA policy to conform to International Civil Aviation (''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 this proposed regulation.

*F. 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 (''NEPA'') (Pub. L. 91–190, 42 U.S.C. Chapter 55) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312(f) of FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' and involves no extraordinary circumstances.

The FAA has reviewed the implementation of the proposed SFAR and determined it is categorically excluded from further environmental review according to FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 312(f). The FAA has examined possible extraordinary circumstances and determined that no such circumstances exist. After careful and thorough consideration of the proposed action, the FAA finds that the proposed Federal action does not require preparation of an EA or EIS in accordance with the requirements of NEPA, Council on Environmental Quality regulations, and FAA Order 1050.1E.

**IV. Executive Order Determinations**

*A. Executive Order 13132, ''Federalism''*

The FAA has analyzed this immediately adopted 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, does not have Federalism implications.

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

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

*C. Executive Order 13609, Promoting International Regulatory Cooperation*

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) 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.

**V. 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 Document Management System (FDMS) Portal (*http://www.regulations.gov*);

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

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

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

*B. Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Public Law 104–121) (set forth as a note to 5 U.S.C. 601), as amended, 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'' section at the beginning of the preamble. You can find out more about SBREFA on the Internet at: *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

**List of Subjects in 14 CFR Part 91**

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Syria.

**The Amendment**

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

## PART 91—GENERAL OPERATING AND FLIGHT RULES

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

**Authority:** 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. In part 91, Subpart M, add new § 91.1609, to read as follows:

**§ 91.1609 Special Federal Aviation Regulation No. 114—Prohibition Against Certain Flights in the Damascus (OSTT) Flight Information Region (FIR).**

(a) *Applicability.* This rule applies to the following persons:

(1) All U.S. air carriers and U.S. commercial operators;

(2) All persons exercising the privileges of an airman certificate issued by the FAA, except such persons operating U.S.-registered aircraft for a foreign air carrier; and

(3) All operators of aircraft registered in the United States, except where the operator of such aircraft is a foreign air carrier.

(b) *Flight prohibition.* No person may conduct flight operations in the Damascus (OSTT) Flight Information Region (FIR), except as provided in paragraphs (c) and (d) of this section.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the Damascus (OSTT) FIR, provided that such flight operations are conducted under a contract, grant, or cooperative agreement with a department, agency, or instrumentality of the U.S. government (or under a subcontract between the prime contractor of the department, agency, or instrumentality, and the person described in paragraph (a)), with FAA approval, or under an exemption issued by the FAA. The FAA will process requests for approval or exemption in a timely manner, with the order of preference being: first, for those operations in support of U.S. government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. government department, agency, or instrumentality; and third, for all other operations.

(d) *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this section to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of parts 119, 121, 125, or 135 of this chapter, each person who deviates from this section must, within ten (10) days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office (FSDO) a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons for it.

(e) *Expiration.* This SFAR will remain in effect until December 30, 2016. The FAA may amend, rescind, or extend this SFAR No. 114, § 91.1609, as necessary.

Issued under authority provided by 49 U.S.C. 106(f), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), in Washington, DC, on December 19, 2014.

**Michael P. Huerta,**

*Administrator.*

[FR Doc. 2014–30377 Filed 12–29–14; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2014–1036]**

## Drawbridge Operation Regulation; Northeast Cape Fear River, Wilmington, NC

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Isabel S. Holmes Bridge, mile 1.0, across the Northeast Cape Fear River, at Wilmington, NC. The deviation restricts the operation of the draw span to facilitate mechanical repairs to the main breaker of the bridge.

**DATES:** This deviation is effective from 8 a.m. on February 9, 2015 to 8 p.m. on February 10, 2015.

**ADDRESSES:** The docket for this deviation, [USCG–2014–1036] is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on the 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 rule, call or

email Mrs. Kashanda L. Booker, Bridge Management Specialist, Fifth District, Coast Guard, telephone 757–398–6227, email *Kashanda.L.Booker@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** The North Carolina Department of Transportation, who owns and operates this double-leaf bascule bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.829(a), to facilitate mechanical repair to the main breaker of the bridge. The removal and replacement of this breaker will involve removing power completely from the bridge to ensure a safe working condition.

In the closed position to vessels, the Isabel S. Holmes Bridge has a vertical clearance of 42 feet above mean high water. Under this temporary deviation, the drawbridge will be closed to vessels requiring an opening from 8 a.m. on February 9, 2015 until 8 p.m. on February 10, 2015.

Vessels that can pass under the drawbridge without an opening may do so at all times. There are no alternate routes for vessels transiting this section of the Northeast Cape Fear River. The drawbridge will be unable to open in the event of an emergency. The Coast Guard will also inform the users of the waterways through 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: December 16, 2014.

**James. L. Rousseau,**

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2014–30449 Filed 12–29–14; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2014–0952]**

## Drawbridge Operation Regulation; Victoria Barge Canal, Bloomington, Texas

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations; request for comments.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the method of operation for the Victoria Barge Canal Railroad Bridge across the Victoria Barge Canal, mile 29.4 at Bloomington, Victoria County, Texas. The bridge will continue to open on signal. The bridge owner, the Victoria County Navigation District, in conjunction with the Union Pacific Railroad (UPRR), the operator of the bridge, requested permission to remotely operate the bridge. This deviation tests a remote operating system as the method for opening the bridge under the existing operating schedule to determine whether a permanent change to remote operations can be approved.

**DATES:** This deviation is effective from midnight on December 30, 2014 through midnight on June 29, 2015.

Comments and related material must be received by the Coast Guard on March 2, 2015.

**ADDRESSES:** You may submit comments identified by docket number USCG–2014–0952 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 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 test deviation, call or email the Coast Guard; Mr. David M. Frank, telephone 504–671–2128, email *david.m.frank@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### 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–2014–0952), 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 (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online 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, type the docket number [USCG–2014–0952] 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 them 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–2014–0952) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*3. Privacy Act*

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

*4. Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one using one of the 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. Basis and Purpose**

The bridge owner, the Victoria County Navigation District, in conjunction with the UPRR requested permission to remotely operate the Victoria Barge Canal Railroad Bridge across the Victoria Barge Canal, mile 29.4 at Bloomington, Victoria County, Texas. Traffic on the waterway consists of primarily commercial traffic, vessels and tows providing services to the Port of Victoria. The vertical lift bridge has a vertical clearance of 22 feet above high water in the closed-to-navigation position and 50 feet above high water in the open-to-navigation position.

Presently, the bridge is required to open on signal for the passage of vessels in accordance with 33 CFR 117.5. However, due to the passing trains, when a request signal to open the bridge is received and before opening the bridge for vessel traffic, the tender is required by his company to contact the railroad dispatcher so that railroad traffic can be stopped, if necessary. The bridge will continue to open on signal for the passage of vessels, but the method of opening the bridge will be accomplished through remote operation by the railroad dispatcher.

The bridge operator, UPRR, determined that by remotely operating the bridge, vessel transit through the bridge will become more efficient. This new remote method of operation provides for the signal to open to be received directly by the railroad dispatcher and will allow the railroad dispatcher to then open the bridge from the remote location.

Vessel traffic on the waterway will be monitored by the railroad dispatcher through the use of Automatic Identification System (AIS). The Victoria County Navigation District recommends that all vessels wishing to transit on the Victoria Barge Canal up to the Port of Victoria have an operating AIS transponder onboard. This AIS tracking system allows the Port of Victoria and the railroad dispatcher to determine where vessels are located on the waterway in relationship to the bridge. Movements of vessels with AIS onboard within two miles of the bridge will trigger notification to the railroad dispatcher that a vessel is approaching the bridge and needs the bridge to be opened. Any vessel that has passed the two-mile signage may also choose to contact the railroad dispatcher via telephone. Upon receipt of this initial notification, the railroad dispatcher must contact the vessel via radiotelephone (marine radio) on VHF–FM channel 13 to coordinate the safe passage of the vessel through the bridge. The railroad dispatcher must provide information to include, but not limited to, the availability to continue the vessel transit as the bridge is open for navigation or that the vessel will have to wait as a train is in the block. If a vessel is required to wait, the railroad dispatcher must indicate to the vessel the amount of time the vessel will have to wait so that the train can be cleared from the block.

In preparation for this test deviation, the bridge owner has posted signage regarding the operation of the bridge at two miles, at one mile, and at one-half mile from the bridge in each direction. To facilitate the continued smooth operation of the bridge, mariners should exchange opening requests using the following method:

1. When a vessel with AIS equipment onboard approaches the two-mile post, the vessel may continue to transit the waterway but must tune their radiotelephone to VHF–FM channel 13 and receive passing instructions from the railroad dispatcher. The dispatcher must contact the vessel promptly to provide passing instruction to insure the continued safe transit of the vessel. Vessels without AIS equipment or vessels with AIS who would prefer to call via telephone, may call the railroad dispatcher at 800–262–4691 to arrange passing instructions.

2. When any vessel approaches the one-mile post, the railroad dispatcher should have either cleared the vessel through the bridge or given an indication that a train is in the block and the vessel will be cleared as soon as practicable. If the vessel has not yet spoken with the railroad dispatcher, the vessel should immediately call the railroad dispatcher via telephone at 800–262–4691.

3. When any vessel reaches the one-half mile post and has not communicated with the railroad dispatcher nor been cleared to proceed, the vessel should stop and contact either the railroad dispatcher at 800–262–4691 or the Port of Victoria emergency contact at 361–570–8855.

During the test deviation phase, the bridge will be operated from Spring, TX, but the bridge operator will be required to have a signal maintainer on call to respond to bridge operation issues should one occur.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedules 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: December 4, 2014.

**David M. Frank,**

*Bridge Administrator, Eighth Coast Guard District.*

[FR Doc. 2014–30494 Filed 12–29–14; 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–2014–1026]**

## Drawbridge Operation Regulations; Mystic River, Mystic, CT

**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 Amtrak Railroad Bridge across the Mystic River, mile 2.4, at Mystic, Connecticut. This deviation is necessary to allow the bridge owner to perform mechanical and electrical repairs at the bridge. This deviation allows the bridge to remain closed for two 14 day closures and two 10 day closures.

**DATES:** This deviation is effective from January 24, 2015 through March 27, 2015.

**ADDRESSES:** The docket for this deviation, [USCG–2014–1026] 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 Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514–4330, *judy.k.leung-yee@uscg.mil*. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:** The Amtrak Railroad Bridge across the Mystic River, mile 2.4, at Mystic, Connecticut, has a vertical clearance in the closed position of 4 feet at mean high water and 8 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.211(a).

The waterway is transited by commercial vessels and seasonal recreational vessels of various sizes.

The bridge owner, National Railroad Passenger Corporation (Amtrak), requested a temporary deviation from the normal operating schedule to facilitate mechanical and electrical repairs at the bridge.

Under this temporary deviation, in effect from January 24, 2015 through March 27, 2015, the Amtrak Railroad Bridge shall remain in the closed position from January 24, 2015 through February 6, 2015; from February 12, 2015 through February 25, 2015; from March 3, 2015 through March 12, 2015; and from March 18, 2015 through March 27, 2015.

The draw shall maintain its normal operating schedule at all other times.

There are no alternate routes for vessel traffic; however, vessels that can pass under the closed draws during this closure may do so at all times. The bridge may be opened in the event of an emergency.

The Coast Guard will inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridges 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: December 15, 2014.

**C.J. Bisignano,**

*Supervisory Bridge Management Specialist, First Coast Guard District.*

[FR Doc. 2014–30454 Filed 12–29–14; 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–2014–1045]**

## Drawbridge Operation Regulation; Intracoastal Waterway, Surf City, NC

**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 NC Route 50–210 Highway Bridge, on the Atlantic Intracoastal Waterway, mile 260.7, in Surf City, NC. This drawbridge is presently regulated to open on signal for commercial vessels and pleasure vessels, except between 7 a.m. and 7 p.m. when the draw need only open on the hour for pleasure vessels. To facilitate necessary repairs, this deviation allows for the bridge to remain closed to navigation from 6 p.m. on February 22, 2015 to 6 p.m. February 24, 2015, except for two openings at 10 a.m. and 3 p.m. each day.

**DATES:** This deviation is effective from 6 p.m. on Sunday, February 22, 2015 to 6 p.m. Tuesday, February 24, 2015.

**ADDRESSES:** The docket for this deviation [USCG–2014–1045] 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 Terrance Knowles, Environmental Protection Specialist, Coast Guard; telephone (757)398–6587, email at *Terrance.A.Knowles@uscg.mil*. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, at 202–366–9826.

**SUPPLEMENTARY INFORMATION:** The North Carolina Department of Transportation (NCDOT), who owns and operates this swing-type highway drawbridge, has requested a temporary deviation from the current operating regulations to facilitate the repairs to the terminal cabinets and submarine cables. The NC Route 50–210 drawbridge located on the Atlantic Intracoastal Waterway, mile 260.7, in Surf City, NC has a vertical clearance of 12 feet above mean high water in the closed to navigation position.

Under the current operating schedule set out in 33 CFR 117.821(a)(2), this bridge is regulated to open on signal for commercial vessels and pleasure vessels, except between 7 a.m. and 7 p.m. when the draw need only open on the hour for the pleasure vessels.

Under this temporary deviation, it allows for the bridge to remain closed to navigation from 6 p.m. on February 22, 2015 to 6 p.m. February 24, 2015, except for two openings at 10 a.m. and 3 p.m. each day. Vessels able to pass underneath the bridge in the closed position may do so at anytime. Also, the bridge can be opened for emergencies and there is an alternate route using the ocean.

The Coast Guard will inform the users of the waterway through Local and Broadcast Notice to Mariners of the temporary deviation in operating schedule for the bridge so that vessels can arrange their transit plans accordingly. Waterway traffic consists of fishing boats, recreational boats, tugs, and barges.

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: December 11, 2014.

**James L. Rousseau,**

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2014–30459 Filed 12–29–14; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2014–1041]**

### Safety Zones; Captain of the Port Boston Fireworks Display Zone, Boston Harbor, Boston, MA

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard will enforce a safety zone in the Captain of the Port Boston Zone on the specified date and time listed below. This action is necessary to ensure the protection of the maritime public and event participants from the hazards associated with this annual recurring event.

**DATES:** The regulation for the safety zone described in 33 CFR 165.119(a)(2) will be enforced from 11:30 p.m. Wednesday, December 31, 2014 to 12:30 a.m. Thursday January 1, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone listed in 33 CFR 165.119(a)(2); Long Wharf Safety Zone. All U.S. navigable waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21′41.2″ N 071°02′36.5″ W (NAD 1983), located off of Long Wharf, Boston MA. This regulation was published in the **Federal Register** on May 12, 2014 (79 FR 26846).

Under the provisions of 33 CFR 165.119, no person or vessel, except for the safety vessels assisting with the event may enter the safety zone unless given permission from the COTP or the designated on-scene representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.119 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and Broadcast Notice to Mariners.

If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: December 11, 2014.

**J.C. O'Connor III,**

*Captain, U.S. Coast Guard, Captain of the Port Boston.*

[FR Doc. 2014–30458 Filed 12–29–14; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2013–1009]**

**RIN 1625–AA87**

### Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending 33 CFR 165.164 by establishing three security zones to replace the three regulated navigation areas (RNAs) currently contained within this section. The Coast Guard is also disestablishing these three RNAs. The three security zones, just like the RNAs they replace, are meant to promote public safety and to protect dignitaries who visit the United Nations in New York, NY.

**DATES:** This rule is effective January 29, 2015.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2013–1009]. 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. Jeff Yunker, Waterways Management Division, Coast Guard Sector New York; telephone (718) 354–4195, email *Jeff.M.Yunker@uscg.mil* or Lieutenant Commander Myles Greenway, Coast Guard First District Waterways Management Branch, Telephone (617) 223–8385, email *Myles.J.Greenway@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

COTP Captain of the Port New York
DHS Department of Homeland Security
FR Federal Register
MOA Memorandum of Agreement
NPRM Notice of Proposed Rulemaking
RNA Regulated Navigation Area
SNPRM Supplemental Notice of Proposed Rulemaking
UN United Nations
UNGA United Nations General Assembly
USSS United States Secret Service

### A. Regulatory History and Information

On September 29, 2014 we published a Notice of Proposed Rulemaking (NPRM) with a request for comments entitled, ''Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY'' in the **Federal Register** (79 FR 58298). We received no comments on the NPRM. We received no requests for a public meeting.

### B. Basis and Purpose

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

As mentioned above, the Coast Guard previously established three RNAs on the waters of the East River and Bronx Kill, near Wall Street Heliport, Randalls and Wards Islands, and the United Nations Building. The primary purpose of these three RNAs was to protect dignitaries, such as the President of the United States, who visit the United Nations. Although these RNAs served their intended purpose, the Coast Guard is replacing them with security zones to best communicate the federal government's security posture in these particular water areas.

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

We received no comments in response to the proposed rule and the final rule is being published without change.

### D. Regulatory Analyses

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

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the fact that the RNAs would simply be designated as security zones as the more appropriate means to regulate the movement of vessels or individuals in the areas. We have not made any changes to the size, boundaries, or enforcement duration of these security zones.

*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 determination is based on the fact that the RNAs are simply being designated as security zones as the more appropriate means to regulate the movement of vessels or individuals in the areas. We are not making any changes to the size, boundaries, or enforcement duration of the security zones.

*3. Collection of Information*

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

*4. Federalism*

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

*5. 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.

*6. Unfunded Mandates Reform Act*

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

*7. 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.

*8. 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.

*9. Protection of Children From Environmental Health Risks*

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

*10. 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.

*11. 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.

*12. Technical Standards*

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

*13. Environment*

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

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

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

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

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

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

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

■ 2. Revise § 165.164 to read as follows:

### § 165.164 Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY.

(a) *Location.* The following areas are security zones:

(1) *Wall Street Heliport.* All waters of the East River within the following

boundaries: East of a line drawn between approximate position 40°42′01″ N, 074°00′39″ W (east of The Battery) to 40°41′36″ N, 074°00′52″ W (point north of Governors Island) and north of a line drawn from the point north of Governors Island to the southwest corner of Pier 7 North, Brooklyn; and south of a line drawn between 40°42′14.8″ N, 074°00′20.3″ W (Wall Street, Manhattan), and the northwest corner of Pier 2 North, Brooklyn (NAD 1983).

(2) *Randalls and Wards Islands:* All waters of the East River between the Hell Gate Rail Road Bridge (mile 8.2), and a line drawn from a point at approximate position 40°47′27.12″ N, 073°54′35.14″ W (Lawrence Point, Queens) to a point at approximate position 40°47′52.55″ N, 073°54′35.25″ W (Port Morris Stacks), and all waters of the Bronx Kill southeast of the Bronx Kill Rail Road Bridge (mile 0.6) (NAD 1983).

(3) *Marine Air Terminal, LaGuardia Airport Security Zone:* All waters of Bowery Bay, Queens, New York, south of a line drawn from the western end of LaGuardia Airport at approximate position 40°46′47″ N, 073°53′05″ W to the Rikers Island Bridge at approximate position 40°46′51″ N, 073°53′21″ W and east of a line drawn between the point at the Rikers Island Bridge to a point on the shore in Queens, New York, at approximate position 40°46′36″ N, 073°53′31″ W (NAD 1983).

(4) *United Nations Manhattan Shoreline.* All waters of the East River bound by the following points: 40°44′37″ N, 073°58′16.5″ W (the base of East 35th Street, Manhattan), then east to 40°44′34.5″ N, 073°58′10.5″ W (about 180 yards offshore of Manhattan), then northeasterly to 40°45′29″ N, 073°57′26.5″ W (about 125 yards offshore of Manhattan at the Queensboro Bridge), then northwesterly to 40°45′31″ N, 073°57′30.5″ W (Manhattan shoreline at the Queensboro Bridge), then southerly along the shoreline to the starting point at 40°44′37″ N, 073°58′16.5″ W (NAD 1983).

(5) *United Nations West Channel Closure.* All waters of the East River north of a line drawn from approximate position 40°44′37″ N, 073°58′16.5″ W (the base of East 35th Street, Manhattan), to approximate position 40°44′31.04″ N, 073°58′03.10″ W (approximately 400 yards east of the Manhattan shoreline), all waters west of a line drawn from approximate position 40°44′31.04″ N, 073°58′03.10″ W (approximately 400 yards east of the Manhattan shoreline), to the southern tip of Roosevelt Island at approximate position 40°44′57.96″ N, 073°57′41.57″ W, then along the western shoreline of Roosevelt Island to the Queensboro Bridge, and all waters south of the Queensboro Bridge (NAD 1983).

(6) *United Nations Full River Closure.* All waters of the East River north of a line drawn from approximate position 40°44′37″ N, 073°58′16.5″ W (the base of East 35th Street, Manhattan), to approximate position 40°44′23″ N, 073°57′44.5″ W (Hunters Point, Long Island City), and south of the Queensboro Bridge (NAD 1983).

(b) *Definitions.*

As used in this section—

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on the COTP's behalf. A designated representative may be on a Coast Guard vessel, or onboard a federal, state, or local agency vessel that is authorized to act in support of the Coast Guard.

*Dignitary* means the President or Vice President of the United States, or visiting heads of foreign states or governments.

(c) *Regulations.* In accordance with the general regulations in 33 CFR 165.33, no person or vessel may enter or move within a security zone created by this section while that security zone is being enforced unless granted permission to do so by the Coast Guard's First District Commander, the COTP, or a designated representative. Vessel operators and persons given permission to enter or operate in a security zone must comply with all directions given to them by the COTP, or a designated representative. Upon being hailed by a U.S. Coast Guard or other duly authorized law enforcement vessel (*e.g.* New York City police) by siren, radio, flashing lights, or other means, the operator of a vessel must proceed as directed, and follow any instructions to anchor or moor up to a waterfront facility.

(d) *Enforcement periods.* The security zone described in paragraph (a)(4) of this section is subject to enforcement at all times. All other security zones established by this section will only be enforced when necessary to protect dignitaries as determined by the COTP.

(e) *Notification.* Because the security zone described in paragraph (a)(4) of this section is subject to enforcement at all times, the Coast Guard will not necessarily take any action to further notify the public about the enforcement of that zone. As for the enforcement periods for the other security zones contained herein, the Coast Guard will rely on the methods described in 33 CFR 165.7 to notify the public of the time and duration of any enforcement period. The COTP may also notify the public about enforcement of these security zones via *http://homeport.uscg.mil/newyork.*

(f) *Contact information.* Vessel operators desiring to enter or operate within a security zone shall telephone the COTP at 718–354–4356 or a designated representative via VHF channel 16 to obtain permission to do so.

Dated: November 15, 2014.

**L.L. Fagan,**

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

[FR Doc. 2014–30455 Filed 12–29–14; 8:45 am]

BILLING CODE 9110–04–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R07–OAR–2014–0602; FRL–9921–08–Region–7]**

## Approval and Promulgation of Air Quality Implementation Plans; Missouri; Withdrawal of Direct Final Rule, Controlling Emissions During Episodes of High Air Pollution Potential

**AGENCY:** Environmental Protection Agency.

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to an adverse comment, the Environmental Protection Agency (EPA) is withdrawing the direct final rule to approve a revision submitted by the State of Missouri and received by EPA on December 17, 2013, pertaining to Missouri's rule ''Controlling Emissions During Episodes of High Air Pollution Potential.'' In the direct final rule published on November 4, 2014 (79 FR 65346), we stated that if we received adverse comment by December 4, 2014, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment. EPA will address the comment received in a subsequent final action based upon the proposed action also published on November 4, 2014, (79 FR 65362). EPA will not institute a second comment period on this action.

**DATES:** The direct final rule published at 79 FR 65346, November 4, 2014, is withdrawn effective December 30, 2014.

**FOR FURTHER INFORMATION CONTACT:** Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219, at

telephone number (913) 551 7147 or by email at *bhesania.amy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Due to an adverse comment, the Environmental Protection Agency (EPA) is withdrawing the direct final rule to approve a revision submitted by the State of Missouri and received by EPA on December 17, 2013, pertaining to Missouri's rule ''Controlling Emissions During Episodes of High Air Pollution Potential.'' In the direct final rule published on November 4, 2014 (79 FR 65346), we stated that if we received adverse comment by December 4, 2014, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment. EPA will address the comment received in a subsequent final action based upon the proposed action also published on November 4, 2014, (79 FR 65362). EPA will not institute a second comment period on this action.

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

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

Dated: December 15, 2014.

**Mark J. Hague,**

*Acting Regional Administrator, Region 7.*

[FR Doc. 2014–30389 Filed 12–29–14; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

**RIN 0648–BC09**

## Atlantic Highly Migratory Species (HMS); 2006 Consolidated HMS Fishery Management Plan (FMP); Amendment 7

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

**ACTION:** Notice of installation schedule for electronic monitoring equipment.

**SUMMARY:** On December 2, 2014, NMFS published the final rule for Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) to ensure sustainable management of bluefin tuna consistent with the 2006 HMS FMP and address ongoing challenges in the Atlantic bluefin tuna fisheries. The regulations implemented by the final rule require that an owner or operator of a commercial vessel permitted or required to be permitted in the Atlantic Tunas Longline category and that has pelagic longline gear on board that vessel, have installed, operate, and maintain an electronic monitoring (EM) system on the vessel. To enable vessels to comply with the EM requirements, NMFS is scheduling dates and locations for installation of, and training on the operation of, EM equipment on up to 135 vessels that were deemed eligible for initial bluefin tuna quota shares in Amendment 7. Although most Amendment 7 measures are effective as of January 1, 2015, the final rule specifies that EM installation must be completed by June 1, 2015, to fish with pelagic longline gear after that date. Therefore, in this notice NMFS is scheduling EM installations between January 1 and June 1, 2015. Pursuant to Amendment 7, NMFS is also providing information about the EM installation process.

**DATES:** See **SUPPLEMENTARY INFORMATION** for installation dates, times, and locations.

**ADDRESSES:** Installation of EM equipment is scheduled at the following ports: Cape Canaveral, FL; Panama City, FL; Dulac, LA; Wanchese, NC, Beaufort, NC, and Barnegat Light, NJ. See **SUPPLEMENTARY INFORMATION** for specific dates, times, and locations.

**FOR FURTHER INFORMATION CONTACT:** Thomas Warren or Brad McHale at 978–281–9260; or Craig Cockrell at 301–427–8503.

**SUPPLEMENTARY INFORMATION:** Atlantic tuna fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Under the Magnuson-Stevens Act, NMFS must manage fisheries to maintain optimum yield on a continuing basis while preventing overfishing. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to carry out recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NMFS. Management of these species is described in the 2006 Consolidated HMS FMP, which is implemented by regulations at 50 CFR part 635. Amendment 7 to the 2006 Consolidated HMS FMP may be found online at: *http://www.nmfs.noaa.gov/sfa/hms/documents/fmp/am7/index.html.*

On December 2, 2014, NMFS published the final rule for Amendment 7 to the 2006 Consolidated HMS FMP to, among other things, take actions related to the operation and management of the Atlantic bluefin tuna fishery, including measures applicable to the pelagic longline fishery, including Individual Bluefin Quotas (IBQs) and expanded monitoring requirements, including electronic monitoring via cameras (79 FR 71510). The regulations implemented by the final rule require that an owner or operator of a commercial vessel permitted or required to be permitted in the Atlantic Tunas Longline category and that has pelagic longline gear on board that vessel, have installed, operate, and maintain an EM system on the vessel. To enable eligible vessels to comply with the EM requirements, NMFS is scheduling dates and locations for installation of and training on the operation of EM equipment. Although most Amendment 7 measures are effective as of January 1, 2015, EM installation must be completed by June 1, 2015, to fish with pelagic longline gear after that date. NMFS has identified funds to pay for the required equipment and its initial installation prior to June 1, 2015, for the currently eligible vessels (135 vessels with Atlantic Tunas Longline permits deemed eligible to receive Individual Bluefin Quota (IBQ) shares pursuant to Amendment 7). This will ease the regulated community's burden associated with the new monitoring requirements. NMFS sent certified letters on December 4, 2014, to the permit holders to inform them of the eligibility status of their Atlantic Tunas Longline permit. Funding for future equipment and installations, and installations of EM on vessels other than the 135 initially identified is uncertain, as is installation after June 1, 2015, even for eligible vessels. The following descriptions and instructions are consistent with the Amendment 7 final rule:

Vessel owners and/or operators should, in the near future, call Saltwater, Inc., the NMFS-approved contractor, at 800–770–3241, to schedule EM installation and training for eligible vessels at one of the ports specified in Table 1, and to discuss logistics (time, precise location, etc.) with the contractor. As specified in the final rule, prior to the scheduled date of installation, vessel owners/operators must purchase a fitting for the pressure side of the line of the drum hydraulic

system. The fitting may be either ''T'' or inline, with a female ¼ threaded National Pipe Thread (NPT) port, to enable connection to the pressure transducer (a component of the EM system).

Before the scheduled date of installation, the NMFS-approved contractor may contact vessel operators in person or by phone to ask questions to help them determine power supply, vessel configuration, and other considerations necessary to facilitate installation of the EM system and to ensure the system's compatibility with the vessel. The vessel owner and/or operator should be present on the day of installation to facilitate equipment installation and provide access to the vessel and information to Saltwater, Inc., about the power supply and other vessel infrastructure and other information as needed. The dates and locations of the EM installations are listed below in Table 1. These dates and locations were chosen based on several factors to reduce the potential for the installation schedule to interfere with fishing trips and to minimize the distances vessel may have to travel. In order to provide as much flexibility as possible for the locations of a limited number of installations, NMFS will announce any additional locations or changes in locations, if warranted, in a future notice (''To Be Determined'').

TABLE 1—DATES AND LOCATIONS OF ELECTRONIC MONITORING INSTALLATIONS

| Date range (2015) | Name of port |
|---|---|
| January 16 through 25. | Cape Canaveral, FL. Panama City, FL. |
| February 14 through 23. | Cape Canaveral, FL. Dulac, LA. |
| March 16 through 25 | Wanchese, NC. Beaufort, NC. |
| April 14 through 23 ... | Wanchese, NC. Dulac, LA. |
| May 11 through 17, and 19 through 25. | To Be Determined. Barnegat Light, NJ. |

**Other Installations**

If a vessel owner and/or operator of an eligible vessel is not able to coordinate installation with Saltwater, Inc., on one of the dates and locations listed in Table 1, the vessel operator should contact Saltwater, Inc., at 800–770–3241 to determine whether another mutually-agreed upon location and date before June 1, 2015, is feasible for installation and training. NMFS cannot guarantee that an alternate location or date will be provided given the limited funding and time available to complete installation of the EM equipment and training. Therefore, vessel owners and/or operators should make a concerted effort to make plans to adhere to the EM installation schedule in Table 1.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 23, 2014.

**Alan D. Risenhoover,**

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

[FR Doc. 2014–30521 Filed 12–24–14; 11:15 am]

BILLING CODE 3510–22–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 140117052–4402–02]**

**RIN 0648–XD651**

## Fisheries of the Northeastern United States; 2015 Summer Flounder, Scup, and Black Sea Specifications and 2015 Commercial Summer Flounder Quota Adjustments

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

**ACTION:** 2015 Summer Flounder, Scup, and Black Sea Specifications and 2015 commercial summer flounder state quotas.

**SUMMARY:** NMFS is announcing revised commercial quotas and recreational harvest limits for the 2015 summer flounder, scup, and black sea bass fisheries, as well as the commercial summer flounder state quotas for fishing year 2015. This is necessary to incorporate adjustments to the quotas due to the suspension of the Research Set-Aside program, implement an accountability measure for the commercial black sea bass fishery, and, for summer flounder state quotas, account for any previously unaccounted for overages from fishing year 2013 and any known overages to date from fishing year 2014. The intent of this action is to modify the established harvest levels to ensure that these species are not overfished or subject to overfishing in 2015.

**DATES:** Effective January 1, 2015, through December 31, 2015.

**FOR FURTHER INFORMATION CONTACT:** Moira Kelly, Fishery Policy Analyst, (978) 281–9218.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage the summer flounder, scup, and black sea bass fisheries. Specifications for these fisheries include the acceptable biological catch (ABC) limit, various catch and landing subdivisions (such as the commercial and recreational sector annual catch limits (ACLs)), annual catch targets (ACTs), sector-specific landing limits (*i.e.,* the commercial fishery quotas and recreational harvest limits), and research set-aside quotas established for one or more fishing years. Typically, these specifications are set on an annual or multi-year basis and announced in the **Federal Register** in December. The specifications rulemaking for 2014 was delayed because of a summer flounder stock assessment. This delay allowed the Council to establish the 2015 specifications in May 2014, in conjunction with the revised 2014 specifications (May 22, 2014; 79 FR 29371). The 2015 specifications were based on recommendations that the Council made in October 2013, and included commercial quotas and recreational harvest limits as adjusted for a 3-percent reduction in landings to accommodate the Research Set-Aside program.

**Research Set-Aside Quota Restoration**

The Research Set-Aside program has recently been the subject of significant debate regarding its effectiveness in providing useful research and for enforcement concerns. At its August 2014 meeting, the Council voted to suspend the Research Set-Aside program for fishing year 2015 and to conduct a comprehensive review of the program. As a result, the previously deducted Research Set-Aside amounts will be redistributed to the respective commercial quota and recreational harvest limits, as follows:

TABLE 1—PREVIOUSLY DEDUCTED RESEARCH SET-ASIDE QUOTA

| | lb | mt |
|---|---|---|
| Commercial Summer Flounder ..... | 332,898 | 151 |
| Recreational Summer Flounder ..... | 220,462 | 100 |
| Commercial Scup ..... | 637,136 | 289 |
| Recreational Scup .... | 205,030 | 93 |
| Commercial Black Sea Bass ..... | 70,548 | 32 |
| Recreational Black Sea Bass ..... | 66,139 | 30 |

**Commercial Black Sea Bass Accountability Measure**

For each fishery, the ABC is equal to the sum of the commercial and recreational ACLs. Based on recommendations from the Council's Summer Flounder, Scup, and Black Sea Bass Monitoring Committees, the ACT was set equal to the ACL for the commercial and recreational sectors for all three species for the 2015 fishing year. However, there was an overage of the 2013 black sea bass commercial ACL because discards were higher than projected. The non-landings accountability measure, specified at 50 CFR 648.143(b), requires the exact amount, in pounds, by which the commercial ACL was exceeded to be deducted, as soon as possible, from the applicable subsequent single fishing year commercial ACL. As such, the commercial black sea bass ACL of 2.60 million lb (1,180 mt) is reduced by the overage amount (22,564 lb (10 mt)), resulting in a commercial ACT of 2.58 million lb (1,170 mt). Projected discards, calculating using recent discard information, consistent with the requirements of the FMP, are then deducted from the ACT for each fishery in order to establish the commercial quota or recreational harvest limit, respectively.

**Revised 2015 Specifications**

Table 2 shows the revised specifications for the 2015 fishing year, including the sector-specific projected discards used to calculate the landings limits. These specifications include the restoration of the Research Set-Aside program quotas, as well as the commercial black sea bass accountability measure described above.

TABLE 2—2015 SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS SPECIFICATIONS

| | Summer Flounder | | Scup | | Black Sea Bass | |
|---|---|---|---|---|---|---|
| | million lb | mt | million lb | mt | million lb | mt |
| ABC | 22.57 | 10,239 | 33.77 | 15,320 | 5.50 | 2,494 |
| Commercial ACL | 13.34 | 6,049 | 26.35 | 11,950 | 2.60 | 1,180 |
| Commercial ACT | 13.34 | 6,049 | 26.35 | 11,950 | 2.58 | 1,170 |
| Commercial Discards | 2.67 | 1,028 | 5.11 | 2,318 | 0.37 | 166 |
| Commercial Quota | 11.07 | 5,021 | 21.23 | 9,632 | 2.21 | 1,004 |
| Recreational ACL/ACT | 9.44 | 4,280 | 7.43 | 3,370 | 2.90 | 1,314 |
| Recreational Discards | 2.06 | 933 | 0.63 | 286 | 0.57 | 258 |
| Recreational Harvest Limit | 7.38 | 3,347 | 6.80 | 3,084 | 2.33 | 1,056 |

**Summer Flounder State Quotas and Overages**

An important component of the annual specifications rulemaking is the notification of the commercial summer flounder state quotas and overages. Overages are calculated using final landings data from the previous fishing year and landings from the current fishing year through October 31. In this case, previously unaccounted for overages from fishing year 2013 are combined with known overages through October 31, 2014. The 2015 summer flounder state quotas, adjusted for these overages, are as follows:

TABLE 3—2015 COMMERCIAL SUMMER FLOUNDER STATE QUOTAS

| State | FMP percent share | 2015 Initial quota | | Quota overages (through 10/31/14) [1] | | Adjusted 2015 quota, less overages | |
|---|---|---|---|---|---|---|---|
| | | lb | kg [2] | lb | kg [2] | lb | kg [2] |
| ME | 0.04756 | 5,265 | 2,390 | 0 | 0 | 5,265 | 2,388 |
| NH | 0.00046 | 51 | 20 | 0 | 0 | 51 | 23 |
| MA | 6.82046 | 754,985 | 342,460 | −5,050 | −2,291 | 749,935 | 340,165 |
| RI | 15.68298 | 1,736,013 | 787,440 | 0 | 0 | 1,736,013 | 787,442 |
| CT | 2.25708 | 249,845 | 113,330 | 0 | 0 | 249,845 | 113,328 |
| NY | 7.64699 | 846,477 | 383,960 | 0 | 0 | 846,477 | 383,955 |
| NJ | 16.72499 | 1,851,358 | 839,760 | 0 | 0 | 1,851,358 | 839,762 |
| DE [3] | 0.01779 | 1,969 | 890 | −51,430 | −23,328 | −49,461 | −22,435 |
| MD | 2.03910 | 225,716 | 102,380 | 0 | 0 | 225,716 | 102,383 |
| VA | 21.31676 | 2,359,640 | 1,070,310 | 0 | 0 | 2,359,640 | 1,070,315 |
| NC | 27.44584 | 3,038,093 | 1,378,060 | 0 | 0 | 3,038,093 | 1,378,056 |
| Total | 100.00 | 11,069,410 | 5,021,000 | −56,450 | −25,619 | [4] 11,062,392 | [4] 5,017,817 |

[1] 2014 quota overage is determined by comparing landings for January through October 2014, plus any landings in 2013 in excess of the 2013 quota (that were not previously addressed in the 2014 specifications) for each state.
[2] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[3] For Delaware, this includes continued repayment of overharvest from previous years.
[4] Total quota is the sum for all states with an allocation. A state with a negative number has a 2015 allocation of zero (0).

**Delaware Summer Flounder Closure**

Table 3 shows that, for Delaware, the amount of overharvest from previous years is greater than the amount of commercial quota allocated to Delaware for 2015. As a result, there is no quota available for 2015 in Delaware. The regulations at § 648.4(b) state that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the Administrator, Greater Atlantic Region, NMFS, has determined no longer has commercial quota available for harvest. Therefore, effective January 1, 2015,

landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder permits are prohibited for the 2015 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the 2015 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

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

Dated: December 23, 2014.

**Alan D. Risenhoover,**

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

[FR Doc. 2014–30500 Filed 12–29–14; 8:45 am]

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# Proposed Rules

Federal Register

Vol. 79, No. 249

Tuesday, December 30, 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 COMMERCE

### National Technical Information Service

### 15 CFR Part 1110

**[Docket Number: 141219001–4999–02]**

**RIN 0692–AA21**

## Certification Program for Access to the Death Master File

**AGENCY:** National Technical Information Service, U.S. Department of Commerce.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The National Technical Information Service (NTIS) issues a proposed rule that would, if implemented, establish a program pursuant to Section 203 of the Bipartisan Budget Act of 2013 (Act) through which persons may become ''certified'' and thereby be eligible to obtain access to Death Master File (DMF) information about an individual within three years of that individual's death (''Limited Access DMF,'' as defined in the proposed rule). The rule is established to provide immediate access to the DMF to those users who demonstrate a legitimate fraud prevention interest or a legitimate business purpose for the information, and to otherwise delay the release of the DMF to all other users, thereby reducing opportunities for identity theft and restricting information sources used to file fraudulent tax returns. This rule sets forth requirements to become a certified person, establishes a process for third party attestation and auditing of the information safeguarding requirement for certification, provides that certified persons will be subject to periodic scheduled and unscheduled audits, and sets out penalties for persons who disclose or use DMF information in a manner not in accordance with the Act. This rule would also establish the process for appealing denials or revocations of certification, the imposition penalties, and a fee program.

**DATES:** Comments are due on this proposed rule on January 29, 2015.

**ADDRESSES:** Written comments on this proposed rule must be submitted via *http://www.regulations.gov.* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. However, comments that contain profanity, vulgarity, threats, or other inappropriate language will not be posted. All personal identifying information (*e.g.,* name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF formats only.

**FOR FURTHER INFORMATION CONTACT:** Henry Wixon, Chief Counsel for NIST, at *henry.wixon@nist.gov,* or by telephone at 301–975–2803. Information about the DMF made available to the public by NTIS may be found at *https://dmf.ntis.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

On December 26, 2013, the Bipartisan Budget Act of 2013, Pub. L. 113–67, (the Act) became law. Section 203 of the Act prohibits the Secretary of Commerce (Secretary) from disclosing DMF information during the three-calendar-year period following an individual's death (the ''Limited Access DMF''), unless the person requesting the information has been certified to receive that information under a program established by the Secretary. The Act further requires the Secretary to establish a fee-based certification program that will certify these persons. It also provides for penalties for those who receive or distribute DMF information without being certified. Finally, the Act sets March 26, 2014, as the date after which any party seeking access to the Limited Access DMF must be certified in order to access Limited Access DMF. The Secretary has delegated the authority to carry out Section 203 to the Director of NTIS.

On March 3, 2014, NTIS published a Request for Information (RFI) and Advance Notice of Public Meeting on the Certification Program for Access to the Death Master File (RFI) at 79 FR 11735, available at *http://www.gpo.gov/fdsys/pkg/FR-2014-03-03/pdf/2014-04584.pdf.* The public meeting was held March 4, 2014, from 9:00 a.m. to 12:00 p.m. Eastern time at the United States Patent and Trademark Office, Madison Building West, 600 Dulany Street, Alexandria, VA 22314. The public meeting was also webcast. Written comments received in response to the RFI, and a transcription of oral comments made and comments submitted via webcast at the public meeting, may be viewed at *https://dmf.ntis.gov.*

On March 26, 2014, NTIS published an interim final rule, ''Temporary Certification Program for Access to the Death Master File,'' at 79 FR 16668, available at *http://www.gpo.gov/fdsys/pkg/FR-2014-03-26/pdf/2014-06701.pdf* (the Interim Final Rule). That rule codified an interim approach to implementing the Act's provisions pertaining to the certification program and the penalties for violating the Act, and set out an interim fee schedule for the program. NTIS published the Interim Final Rule in order to provide a mechanism for persons to access the DMF immediately on the effective date prescribed in Section 203 of the Act. Written comments received in response to the Interim Final Rule may be viewed at *http://www.regulations.gov.*

The preambles for both the RFI and the Interim Final Rule set out the specific provisions of the Act, and also noted that several Members of Congress described their understanding of the purpose and meaning of Section 203 during Congressional debate on the Joint Resolution which became the Act. Citations to those Member statements were provided in the RFI, which also provided background on the component of the DMF covered by Section 203, which originates from the Social Security Administration. The Interim Rule was established to provide immediate access to the DMF to those users who demonstrate a legitimate fraud prevention interest or a legitimate business purpose for the information, and to otherwise delay the release of the DMF to all other users, thereby reducing opportunities for identity theft and restricting information sources used to file fraudulent tax returns.

This rule, if adopted, would replace the regulatory structure put into place by the Interim Final Rule. It describes who may become a ''Certified Person'' under the Act, creates a process by which NTIS can certify such persons, establishes a process for third party attestation and auditing of the information safeguarding requirement for certification, establishes a fee program, establishes penalties for disseminating or receiving DMF information in violation of the Act, and creates a process to appeal some penalties. However, until this rule becomes final and effective, the Temporary Certification Program established under the Interim Final Rule shall remain in force and effect.

**The Proposed Rule**

This proposed rule would amend subparts and add a new subpart E to the DMF Certification Program in part 1110 of title 15 of the Code of Federal Regulations. The following describes specific provisions being amended.

Under Section 1110.2, ''Definitions,'' NTIS proposes to revise the definition of ''Person'' to recite ''state and local government departments and agencies,'' so that ''Person'' will be defined as including ''corporations, companies, associations, firms, partnerships, societies, joint stock companies, and other private organizations, and state and local government departments and agencies, as well as individuals.'' However, Executive departments or agencies of the United States Government would not be considered ''Persons'' for the purposes of this rule. Accordingly, Executive departments or agencies will not have to complete the Certification Form as set forth in the rule, and will be able to access Limited Access DMF under a subscription or license agreement with NTIS, describing the purpose(s) for which Limited Access DMF is collected, used, maintained and shared. Those working on behalf of and authorized by Executive departments or agencies may access the Limited Access DMF from their sponsoring Executive department or agency, which will be responsible for ensuring that such access is solely for the authorized purposes described by the agency. Unauthorized secondary use of Limited Access DMF by Executive departments or agencies or those working for them or on their behalf is prohibited. If an Executive department or agency wishes those working on its behalf to access the Limited Access DMF directly from NTIS, then those working on behalf of that Executive department or agency will be required to complete and submit the Certification Form as set forth in the rule and enter into a subscription agreement with NTIS in order to access the Limited Access DMF. Under this proposed rule, a Certified Person will be eligible to access the Limited Access DMF made available by NTIS through subscription or license.

NTIS proposes to revise the definition of ''Limited Access DMF'' by adding a sentence that clarifies that an individual element of information (name, social security number, date of birth, or date of death) in the possession of a Person, whether or not certified, but obtained by such Person through a source independent of the Limited Access DMF, will not be considered ''DMF information'' for the purposes of the rule, and requests comment on the proposed definition. The additional sentence is as follows:

> As used in this part, Limited Access DMF does not include an individual element of information (name, social security number, date of birth, or date of death) in the possession of a Person, whether or not certified, but obtained by such Person through a source independent of the Limited Access DMF. If a Certified Person obtains, or a third party subsequently provides to a Certified Person, death information (*i.e.,* the name, social security account number, date of birth, or date of death) independently, the information is not considered part of the Limited Access DMF if the NTIS source information is replaced with the newly provided information.

NTIS believes this revision of the definition of Death Master File adds clarity to what is and is not Limited Access DMF, and requests comment on the proposed definition.

Under Section 1110.102(a)(1) of the interim final rule, to become certified, a Person must certify that the Person has a ''legitimate fraud prevention interest,'' or has a ''legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty,'' and must specify the basis for so certifying. NTIS is not proposing to change this requirement here. However, the Temporary Certification Program established under the Interim Final Rule did not provide for review, assessment or audit of the systems, facilities, and procedures of a Person with attestation by an independent, third party conformity assessment body, as NTIS is now proposing in this rule, and as discussed at length below. Given this proposed rule's emphasis on security and safeguarding of Limited Access DMF, the proposed rule's provision for procedures and processes addressing the proper safeguarding of Limited Access DMF, and the proposed rule's provision for review, assessment, audit and attestation of a Person's information and information security controls by independent, third party conformity assessment bodies, NTIS requests comments on the specificity with which a Person should be required to provide as the basis for certifying its fraud prevention interest or business purpose under the proposed rule.

NTIS acknowledges that some entities may seek to provide NTIS with supplemental or supporting information over and above what may be required along with the attestation, to augment or support their request for certification for access to Limited Access DMF. If submitted, NTIS will evaluate such materials and may accept or reject that information when determining whether to certify a person. To assist NTIS in determining how to evaluate such materials, NTIS also requests comments on what types of materials NTIS should accept in support of a certification that a party has a legitimate business purpose or legitimate fraud prevention interest.

This rule would add a requirement that, in order to become certified, a Person must submit a written attestation from an Accredited Certification Body (as defined below) that such Person has information security systems, facilities, and procedures in place to protect the security of the DMF information, as required under Section 1110.102(a)(2) of the rule. Such a requirement was not made under the Interim Final Rule. In considering how to establish a permanent certification program as required under Section 203, NTIS carefully considered developing, within the agency, the capacity to evaluate the information systems, facilities and procedures of Persons to safeguard DMF information, as well as to conduct audits of Certified Persons. NTIS has consulted with the National Institute of Standards and Technology (NIST), which has expertise in testing, standard setting, and certification of various systems. Based on NIST recommendations, NTIS believes it appropriate for private sector, third party, Accredited Certification Bodies to attest to a Person's information security safeguards under Section 1110.102(a)(2) of the rule, and for NTIS to rely upon such attestation in certifying a Person under the proposed rule. NTIS also believes it appropriate for Accredited Certification Bodies to conduct periodic scheduled and unscheduled audits of Certified Persons on behalf of NTIS. NTIS requests comments on the proposal to accept attestations by private sector, third party, Accredited Certification Bodies under the rule.

Under this rule, an ''Accredited Certification Body'' is an independent

third party conformity assessment body that is not owned, managed, or controlled by a Person or Certified Person which is the subject of attestation or audit, and that is accredited, by an accreditation body under nationally or internationally recognized criteria such as, but not limited to, the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) publication ISO/IEC 27006–2011, ''Information technology—Security techniques—Requirements for bodies providing audit and certification of information security management systems,'' to attest that a Person or Certified Person has information technology systems, facilities and procedures in place to safeguard DMF information. Based on NIST recommendations, NTIS believes it is appropriate to use the ISO/IEC 27006–2001 as a baseline for accreditation under the proposed certification program. The ISO Committee on conformity assessment (CASCO) prepared ISO/IEC 27006–2001, and NTIS believes the use of the ISO/IEC standard will help ensure that attestations and audits under the proposed certification program operate in a manner consistent with national and international practices. Accreditation is a third-party attestation that a conformity assessment body operates in accordance with national and international standards. Accreditation is used nationally and internationally in many sectors where there is a need, through certification, that safety, health or security requirements are met by products or services. Accreditation ensures that a conformity assessment body is technically competent in the subject matter (in this case, the information safeguarding and security requirements as set forth in the rule) and has a management system in place to ensure competency and acceptable certification program operations on a continuing basis. Accreditation requires that Accredited Certification Bodies be re-accredited on a periodic basis.

However, NTIS is also aware that standards other than ISO/IEC 27006–2001 exist that may be equally appropriate for the purposes of accreditation under the Act, and that additional standards may be developed in the future. At this time, NTIS proposes that an Accredited Certification Body may attest, subject to the conditions of verification in proposed section 1110.503 of this rule, that it is accredited to a nationally or internationally recognized standard for bodies providing audit and certification of information security management systems other than ISO/IEC Standard 27006–2011. In addition, NTIS proposes that an Accredited Certification Body must also attest that the scope of its accreditation encompasses the information safeguarding and security requirements as set forth in the rule. NTIS requests comments on these proposals.

NTIS is aware that security and safeguarding of information and information systems is of great concern in many fields of endeavor other than with respect to DMF information. NTIS has consulted with subject matter experts from NIST, which in 2014 published the ''Framework for Improving Critical Infrastructure Cybersecurity'' (Framework), in response to President Obama's Executive Order 13636, ''Improving Critical Infrastructure Cybersecurity,'' which established that ''[i]t is the Policy of the United States to enhance the security and resilience of the Nation's critical infrastructure and to maintain a cyber environment that encourages efficiency, innovation, and economic prosperity while promoting safety, security, business confidentiality, privacy, and civil liberties.'' In articulating this policy, the Executive Order calls for the development of a voluntary risk-based Cybersecurity Framework—a set of industry standards and best practices to help organizations manage cybersecurity risks. The resulting Framework, created by NIST through collaboration between government and the private sector, uses a common language to address and manage cybersecurity risks in a cost-effective way based on business needs without placing additional regulatory requirements on businesses. The Framework enables organizations—regardless of size, degree of cybersecurity risk, or cybersecurity sophistication—to apply the principles and best practices of risk management to improving the security and resilience of critical infrastructure. The Framework provides organization and structure to today's multiple approaches to cybersecurity by assembling standards, guidelines, and practices that are working effectively in industry today. Accordingly, in addressing the requirements of Section 203 for ''systems, facilities, and procedures'' to safeguard DMF information, NTIS contemplates that Persons, as well as Accredited Certification Bodies, may look to the Framework and to the Framework's Informative References. The Framework is referenced by NTIS in its security guideline document, ''Limited Access Death Master File (LADMF) Certification Program Publication 100,'' which is similar to the Internal Revenue Service (IRS) Publication 1075, ''Tax Information Security Guidelines for Federal, State and Local Agencies,'' available at *http://www.irs.gov/pub/irs-pdf/p1075.pdf,* and IRS Publication 4812, ''Contractor Security Controls,'' available at *http://www.irs.gov/pub/irs-procure/Publication-4812—Contractor—Security-Controls.pdf.* As set forth in the security guideline document as well as in the Framework's Informative References, a number of different approaches exist to safeguarding information. These include ISO/IEC, Control Objectives for Information and Related Technology (COBIT), International Society of Automation (ISA), and NIST's 800 series publications. Others include the Service Organization Controls (SOC) of the American Institute of CPAs (AICPA). NTIS intends that by following its security guideline document, Persons and Certified Persons will satisfy the requirements of the rule. NTIS requests comments on other relevant approaches that may exist and be suitable for the purposes of the rule.

NTIS is aware that security and safeguarding assessments such as those contemplated under this proposed rule are routinely carried out in the private sector, including by entities which may satisfy the requirements for Accredited Certification Bodies under the rule. Provided that such a routine assessment or audit of a Person would permit an Accredited Certification Body to attest that such Person has systems, facilities, and procedures in place to safeguard DMF information as required under Section 1110.102(a)(2) of the rule, albeit carried out for a purpose other than certification under the rule, NTIS proposes to accept an attestation in support of a Person's certification with respect to the requirements under Section 1110.102(a)(ii) of the rule, as well as in support of the renewal of a Certified Person's certification. NTIS proposes that any attestation, whether for a Person seeking certification or for a Certified Person seeking renewal, must be based on the Accredited Certification Body's review or assessment conducted no more than three years prior to the date of submission of the Person's completed certification statement or of the Certified Person's completed renewal certification statement. As noted, an Accredited Certification Body's review or assessment need not have been conducted specifically or

solely for the purpose of submission of an attestation under the proposed rule, provided the review or assessment addresses the controls set forth in the ''Limited Access Death Master File (LADMF) Certification Program Publication 100.'' From NTIS's consultations with NIST subject matter experts, NTIS believes that the limitation of three years is appropriate as to frequency for assessments for the security and safeguarding of information and information systems, and that permitting Persons and Certified Persons to rely on attestations based on such assessments conducted for purposes other than solely for the rule is reasonable and cost-effective. NTIS requests comment on this aspect of the proposed rule.

NTIS proposes to amend Section 1110.102(a)(2) and (3) to clarify that to be certified to obtain access to the Limited Access DMF, a Person must certify both that the Person ''has systems, facilities, and procedures in place to safeguard the accessed information, and experience in maintaining the confidentiality, security, and appropriate use of accessed information, pursuant to requirements similar to the requirements of section 6103(p)(4) of the Internal Revenue Code of 1986,'' and that the Person ''agrees to satisfy such similar requirements.'' This standard differs somewhat from the requirement of Section 203 of the Act, because that Section contains contradictory statements about the types of systems to safeguard information that a Certified Person must have in place. In Section 203(b)(2)(B), the Act states that in order to receive Limited Access DMF, a Person must agree to comply with requirements ''similar to'' section 6103(p)(4) of the Internal Revenue Code (IRC). Section 6103(p)(4) of the IRC is directed to Federal government agencies, and as such the ''similar to'' statement makes sense for non-government actors which are the subject of the Act. However, Section 203(b)(2)(C) also requires a Certified Person to ''satisfy the requirements of such section 6103(p)(4) *as if such section applied to such person''* (emphasis added). It is unclear how or why a Certified Person could or should satisfy an information integrity requirement ''similar to'' section 6103(p)(4) of the IRC while also satisfying section 6103(p)(4) of the IRC. To resolve this ambiguity, NTIS interprets Section 203(b) of the Act as requiring Persons to certify that they have systems, facilities, and procedures in place that are ''similar to'' those required by section 6103(p)(4) of the IRC in order to become Certified Persons. NTIS requests comments on this interpretation, which NTIS believes will allow NTIS to meet the interest of protecting personal data generally and deterring fraud, while also allowing NTIS to set the data integrity standards appropriate to safeguard DMF information specifically. NTIS has developed a security guideline document, ''Limited Access Death Master File (LADMF) Certification Program Publication 100,'' similar to the Internal Revenue Service (IRS) Publication 1075, ''Tax Information Security Guidelines for Federal, State and Local Agencies,'' available at *http://www.irs.gov/pub/irs-pdf/p1075.pdf,* as well as IRS Publication 4812, ''Contractor Security Controls,'' available at *http://www.irs.gov/pub/irs-procure/Publication-4812—Contractor—Security-Controls.pdf,* and drawing on the National Institute of Standards and Technology ''Framework for Improving Critical Infrastructure Cybersecurity,'' and informative references cited therein, available at *http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214.pdf,* that sets out safeguard approaches adapted to the provisions of Section 203 of the Act. NTIS will invite the public to comment on and to contribute to this guidance document on a continuing basis. NTIS contemplates that conforming to the proposed NTIS security guideline document will permit Persons and Certified Persons to satisfy the Act. A draft of the proposed NTIS security guideline document is available for review at *https://dmf.ntis.gov.*

NTIS believes that adherence to the information security controls and practices described in the LADMF Certification Program Publication 100 will help protect LADMF information that resides on Certified Persons' information technology systems. Combined with the strict liability for misusing the LADMF information set out in section (c) of the Act, and in section 1110.102 of this proposed rule, LADMF Certification Program Publication 100 describes safeguards for minimizing occurrences of improper access to, and misuse of, LADMF data. Specifically, LADMF Certification Program Publication 100 establishes the guidelines and practices that Certified Persons are to apply to their information security programs to protect LADMF information in their possession. Failure to adhere to these guidelines and practices increases the likelihood of unauthorized access to, and misuse of, LADMF data, including fraudulent misuse. Accordingly, the information security measures required by this rule and adherence to the guidelines and practices described in LADMF Certification Program Publication 100 require Certified Persons to maintain adequate security controls for LADMF information.

Persons previously certified under the Interim Final Rule will need to become certified in accordance with the requirements of the proposed rule, when it becomes final and effective. Certification under this rule will include an updated certification form, discussed below under the heading, ''Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule,'' collecting additional information that will improve NTIS's ability to determine whether a Person meets, to the satisfaction of NTIS, the requirements of Section 203 of the Act.

Under Section 1110.103 of the proposed rule, a Certified Person may disclose Limited Access DMF to another Certified Person, and will be deemed to satisfy the disclosing Certified Person's obligation to ensure compliance with proposed Section 1110.102(a)(4)(i)–(iii) for the purposes of certification. Similarly, under Section 1110.200(c), NTIS will not impose a penalty, under Section 1110.200(a)(1)(i)–(iii) of the proposed rule, on a first Certified Person who discloses Limited Access DMF to a second Certified Person, where the first Certified Person's liability rests solely on the fact that the second Certified Person has been determined to be subject to penalty. While the proposed rule does not restrict disclosure of Limited Access DMF to Certified Persons, NTIS believes that these provisions create an appropriately limited ''safe harbor'' for Certified Persons to disclose Limited Access DMF to other Certified Persons. However, note that any Person that receives Limited Access DMF from a Certified Person is still subject to penalty under Section 1110.200(a)(1)–(4), for violations of the Act. The safe harbor provision applies to each disclosure individually, and only the Certified Person disclosing the information, not the recipient, receives the benefit of the presumed compliance with Section 1110.102(a)(4)(i)–(iii). NTIS requests comment on this provision of the proposed rule, including on whether or not the ''safe harbor'' should also apply when a first Certified Person discloses Limited Access DMF to a second Person, believed to be a Certified Person, but who is not, in fact, certified under the proposed rule.

Under Section 1110.201 of the proposed rule, NTIS may conduct, or may request an Accredited Certification Body conduct, at the Certified Person's expense, periodic scheduled and unscheduled audits of the systems, facilities, and procedures of any Certified Person relating to such Certified Person's access to, and use and distribution of, the Limited Access DMF. NTIS contemplates that many, if not most, audits of Certified Persons will be scheduled, but NTIS may also conduct, or request an Accredited Certification Body conduct, unscheduled audits—for example, where a prior scheduled audit may have identified the need for adjustment to a Certified Person's systems, facilities, or procedures. Audits conducted by NTIS or by an Accredited Certification Body may take place at a Certified Person's place of business (*i.e.,* field audits), or may be conducted remotely (*i.e.,* desk audits). As discussed above, NTIS is proposing that all Certified Persons be audited with respect to the requirements of Section 1110.102(a)(2) no less frequently than every three years under the program, and that this requirement may be satisfied by a Certified Person based on an audit or assessment conducted for a purpose other than solely for the rule. NTIS is not proposing routine scheduled audits on the attestation regarding Section 1110.102(a)(1), though unscheduled audits of this and other aspects of the requirements for certification may be conducted in NTIS's discretion. NTIS requests comment on these aspects of the proposed rule. NTIS' costs for conducting audits will be recoverable from the audited Person. Failure to submit to audit, to cooperate fully with NTIS in its conduct of an audit, or to pay an audit fee owed to NTIS, will be grounds for revocation of certification. NTIS intends that a Person or Certified Person will be directly responsible to an Accredited Certification Body for any charges by that Accredited Certification Body related to requirements under this proposed rule, as it would be responsible for NTIS' auditing costs under the Act, and requests comments.

Section 1110.200(c) of the proposed rule sets out the penalties for unauthorized disclosures or uses of the Limited Access DMF. Each individual unauthorized disclosure is punishable by a fine of $1,000, payable to the United States Treasury. However, the total amount of the penalty imposed under this part on any Person for any calendar year shall not exceed $250,000, unless such Person's disclosure or use is determined to be willful or intentional. A disclosure or use is considered willful when it is a ''voluntary, intentional violation of a known legal duty.'' See, *U.S.* v. *Pomponio,* 429 US 10 (1976) (holding that for purposes of interpreting the criminal tax provisions of the Internal Revenue Code, the term ''willful'' means a voluntary, intentional violation of a known legal duty).

The proposed rule's Section 1110.300 establishes the procedures to appeal a denial or revocation of certification, or of penalties for violating the Act. An administrative appeal must be filed, in writing, within 30 days (or such longer period as the Director of NTIS may, for good cause shown in writing, establish in any case) after receiving a notice of denial, revocation or imposition of penalties. Appeals should be directed to the Director of NTIS. Any such appeal must set forth the following: The name, street address, email address and telephone number of the Person seeking review; a copy of the notice of denial or revocation of certification, or the imposition of penalty, from which appeal is taken; a statement of arguments, together with any supporting facts or information, concerning the basis upon which the denial or revocation of certification, or the imposition of penalty, should be reversed; and a request for hearing of oral argument before a representative of the Director, if desired.

Section 1110.300(a)–(d) proposes the procedures for an administrative appeal. Under section 1110.300(c), a Person may, but need not, retain an attorney to represent such Person in an appeal. Those with attorneys shall designate such attorney by submitting to the Director of NTIS a written power of attorney. If a hearing is requested, the Person (or the Person's designated attorney) and a representative of NTIS familiar with the notice from which appeal has been taken will present oral arguments which, unless otherwise ordered before the hearing begins, will be limited to thirty minutes for each side. A Person need not retain an attorney or request an oral hearing to secure full consideration of the facts and the Person's arguments. Where no hearing is requested, the Director shall review the case and issue a decision as set out below.

Under Section 1110.300(e), the Director of NTIS shall issue a decision on the matter within 120 days after a hearing, or, if no hearing was requested, within 90 days of receiving the letter of appeal. In making decisions on appeal, the Director shall consider the arguments and statements of fact and information in the Person's appeal, and made at the oral argument hearing, if such was requested, but the Director at his or her discretion and with due respect for the rights and convenience of the Person and the agency, may call for further statements on specific questions of fact or may request additional evidence in the form of affidavits on specific facts in dispute. An appellant may seek reconsideration of the decision, but must do so in writing, and the request for reconsideration must be received within 30 days of the Director's decision or within such an extension of time thereof as may be set by the Director of NTIS before the original period expires. A decision shall become final either after the 30-day period for requesting reconsideration expires and no request has been submitted, or on the date of final disposition of a decision on a petition for reconsideration.

As discussed above, for certification of a Person under the rule, as well as renewal of a Certified Person's certification, NTIS proposes requiring submission of a third party attestation as to the information safeguarding requirement. Third party attestation is accordingly a key element of the certification program under the rule. In view of this, the rule provides that an Accredited Certification Body must be independent of the Person or Certified Person, and must itself be accredited by a recognized accreditation body. The requirement for independence from the Person seeking certification, or from the Certified Person seeking renewal or subject to audit, is important to ensure integrity of any assessment and attestation. NTIS requests comment on this requirement.

NTIS proposes that an Accredited Certification Body must be an independent third party certification body that is not owned, managed, or controlled by a Person or Certified Person that is the subject of attestation or audit by the Accredited Certification Body. Under the rule, a Person or Certified Person is considered to own, manage, or control a third party certification body if any one of the following characteristics applies:

(1) The Person or Certified Person holds a 10 percent or greater ownership interest, whether direct or indirect, in the third party certification body. Indirect ownership interest is calculated by successive multiplication of the ownership percentages for each link in the ownership chain;

(2) The third party certification body and the Person or Certified Person are owned by a common ''parent'' entity;

(3) The Person or Certified Person has the ability to appoint a majority of the third party certification body's senior internal governing body (such as, but

not limited to, a board of directors), the ability to appoint the presiding official (such as, but not limited to, the chair or president) of the third party certification body's senior internal governing body, and/or the ability to hire, dismiss, or set the compensation level for third party certification body personnel; or

(4) The third party certification body is under a contract to the Person or Certified Person that explicitly limits the services the third party certification body may perform for other customers and/or explicitly limits which or how many other entities may also be customers of the third party certification body.

In order for NTIS to accept an attestation as to, or audit of, a Person or Certified Person submitted to NTIS under the rule, the Accredited Certification Body must attest that it is independent of that Person or Certified Person. The Accredited Certification Body also must attest that it has read, understood, and agrees to the regulations as set forth in the rule. The Accredited Certification Body must also attest that it is accredited to ISO/IEC Standard 27006–2011 ''Information technology—Security techniques—Requirements for bodies providing audit and certification of information security management systems,'' or to another nationally or internationally recognized standard for bodies providing audit and certification of information security management systems. The Accredited Certification Body must also attest that the scope of its accreditation encompasses the safeguarding and security requirements as set forth in the rule. NTIS requests comments on these aspects of the proposed rule.

Where review or assessment or audit by an Accredited Certification Body was not conducted specifically or solely for the purpose of submission under this part, the rule requires that the written attestation or assessment report (if an audit) describe the nature of that review or assessment or audit, and that the Accredited Certification Body attest that on the basis of such review or assessment or audit, the Person or Certified Person has systems, facilities, and procedures in place to safeguard DMF information as required under Section 1110.102(a)(2) of this part. The rule provides that in so attesting, an Accredited Certification Body may reference ''Limited Access Death Master File (LADMF) Certification Program Publication 100,'' guidelines published by NTIS and available at *https://dmf.ntis.gov.*

While NTIS will normally accept written attestations and assessment reports from an Accredited Certification Body that attests, to the satisfaction of NTIS, as provided in Section 1110.502 of the rule, the rule also provides that NTIS may decline to accept written attestations or assessment reports from an Accredited Certification Body, whether or not it has attested as provided in Section 1110.502, for any of the following reasons:

(1) When it is in the public interest under Section 203 of the Bipartisan Budget Act of 2013, and notwithstanding any other provision of this part;

(2) Submission of false or misleading information concerning a material fact(s) in an Accredited Certification Body's attestation under Section 1110.502;

(3) Knowing submission of false or misleading information concerning a material fact(s) in an attestation or assessment report by an Accredited Certification Body of a Person or Certified Person;

(4) Failure of an Accredited Certification Body to cooperate in response to a request from NTIS verify the accuracy, veracity, and/or completeness of information received in connection with an attestation under Section 1110.502 or an attestation or assessment report by that Body of a Person or Certified Person. An Accredited Certification Body ''fails to cooperate'' when it does not respond to NTIS inquiries or requests, or it responds in a manner that is unresponsive, evasive, deceptive, or substantially incomplete.

(5) Where NTIS is unable for any reason to verify the accuracy of the Accredited Certification Body's attestation.

In addition, with respect to audits under the proposed rule, NTIS may in its discretion decline to accept an attestation or assessment report conducted for other purposes, and may conduct or require that an Accredited Certification Body conduct a review solely for the purpose of the rule, and requests comments on this proposal.

## Classification

*Executive Order 12630*

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

*Executive Order 12866*

This proposed rule has been determined to be significant under Executive Order 12866.

*Executive Order 12898*

NTIS evaluated the environmental effects of this proposed rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions and no collective environmental impact resulting from its promulgation.

*Executive Order 13132*

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

## Initial Regulatory Flexibility Analysis (IRFA)

Pursuant to Section 603 of the Regulatory Flexibility Act, NTIS has prepared the following IRFA to analyze the potential impact that this proposed rule, if adopted, would have on small entities.

### Description of the Reasons Why Action Is Being Considered

The policy reasons for issuing this proposed rule are discussed in the preamble of this document, and not repeated here.

### Statement of the Objectives of, and Legal Basis for, the Proposed Rule; Identification of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

The legal basis for this rule is Section 203 of the Bipartisan Budget Act of 2013, Pub. L. 113–67, codified at 42 USCA § 1306c (the Act). The proposed rule is intended to implement the Act, which requires the Secretary of Commerce to create a program to certify that persons given access to information contained on the DMF with respect to any deceased individual at any time during the 3-calendar-year period following that individual's death satisfy the statutory requirements for accessing the Limited Access DMF. Accordingly, this rule creates a program for certifying persons eligible to access the Limited Access DMF. It requires that Certified Persons annually re-certify as eligible to access the Limited Access DMF, and that they agree to be subject to scheduled and unscheduled audits. The rule also sets out the penalties for violating the Act's disclosure provisions, establishes a process to appeal penalties or revocations of

certification, and adopts a fee program for the certification program, audits, and appeals.

When the proposed rule becomes final, it will replace the Interim Final Rule NTIS put in place to establish a Temporary Certification Program, in order to avoid the complete loss of access to the Limited Access DMF when the Act became effective. No other rules duplicate, overlap, or conflict with this proposed rule.

**Number and Description of Small Entities Regulated by the Proposed Action**

The proposed rule will apply to all persons seeking to become certified to obtain the Limited Access DMF from NTIS. The entities affected by this rule could include banks and other financial institutions, pension plans, health research institutes or companies, state and local governments, information companies, and similar research services, and others not identified. NTIS therefore requests comments on the nature and types of affected entities.

Many of the impacted entities likely are considered ''large'' entities under the applicable Small Business Administration (SBA) size standards. While NTIS anticipates that this rule will have an impact on various small entities, NTIS is unable at this time to estimate the number of impacted entities that may be considered small entities. Because NTIS cannot estimate the type, number, or other details about the small entities potentially impacted by this rule, it cannot make an estimate about the level of impact this rule will have on those entities. Nor can it estimate whether the rule's impacts will disproportionately impact small entities as opposed to large ones.

Because NTIS lacks information about the types and sizes of entities impacted by this rule, it cannot determine the impacts. Accordingly, NTIS requests that the public provide it with information about the types of entities impacted by this rule, whether those are small or large entities under SBA's size standards, and the level of or a description of the type of impacts that this rule will have on those entities.

**Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule**

This proposed rule will require Persons seeking certification to access the Limited Access DMF to provide NTIS with information about the basis upon which they are seeking certification (*i.e.,* legitimate fraud prevention or business purpose), using an updated version of the Limited Access Death Master File Subscriber Certification Form, Form NTIS FM161 (Certification Form), approved by the Office of Management and Budget (OMB) under Control Number 0692–0013. Specifically, the Certification Form will be updated to include collection of additional information that will improve NTIS's ability to determine whether a Person meets, to the satisfaction of NTIS, the requirements of Section 203 of the Act. This additional information will also facilitate NTIS's ability to carry out audits, and Certified Persons agree to be subject to periodic scheduled and unscheduled audits of their systems and operations to ensure compliance with the Act's data integrity standards. Therefore, the proposed rule requires Certified Persons to maintain their records for these audits. Additionally, to maintain their status as Certified Persons, applicants must re-certify with NTIS on an annual basis.

**Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities**

As required by 5 U.S.C. 603(c), NTIS considered significant alternatives to the proposed rule to minimize the impacts of the proposed rule on small entities. NTIS considered a (1) no-action alternative; (2) setting different auditing requirements for small entities; (3) relaxing the systems requirements for small entities; and (4) the preferred alternative of setting a fee schedule to enable NTIS to achieve full cost recovery, and requiring Certified Persons to maintain data in a manner similar to the requirements of section 6103(p)(4) of the IRC.

NTIS rejected the no-action alternative because the Act requires that any person seeking Limited Access DMF become certified to access such information according to a program established by the Secretary. The no-action alternative would establish no new program, and therefore is contrary to the Act.

Similarly, NTIS did not further consider alternatives 2 and 3, which would have created exceptions to the auditing requirements of the proposed rule and the systems requirements for becoming certified. Exempting small entities from the auditing or systems requirements would potentially risk allowing the Limited Access DMF to be released to non-certified persons or the public at large, and thus would counter the benefits to security and anti-fraud efforts the rule will create.

The fourth alternative complies with the Act, creates a program to certify persons eligible to access the Limited Access DMF, and safeguards that information from unauthorized disclosures. The audits required by the rule further strengthen the oversight NTIS has over the redistribution and use of the Limited Access DMF, and thereby help ensure the data's security. Because alternative 4 accomplishes the statutory goals set out in the Act, and would not create the potential for security or data integrity breaches, NTIS prefers it and has proposed a rule based on this alternative.

**Paperwork Reduction Act**

With this proposed rule, NTIS is requesting approval of a new information collection that will contain two forms. One form, the ''Limited Access Death Master File (LADMF) Systems Safeguards Attestation Form,'' is new. The new information collection will also revise the ''Limited Access Death Master File Subscriber Certification Form'' (Certification Form), which is currently approved under OMB Control No. 0692–0013. In the Certification Form NTIS has added a description of the type of information required for each fill-in box to ensure that the respondents' answers show that they meet the requirements of Section 203 of the Act. The revised Certification Form also collects the following information in addition to the information collected in the existing Certification Form:

- URL (if applicable)—Collection of each respondent's URL is necessary for NTIS to perform due diligence. NTIS will use the information to ascertain that the organization seeking certification is a legitimate business performing the functions it claims to be performing.
- NTIS Customer Number—Collection of each respondent's NTIS Customer Number will allow NTIS to readily identify existing customers, streamlining the certification process.
- Dun and Bradstreet Number (if applicable)—Collection of each respondent's Dun and Bradstreet Number is necessary for NTIS to perform due diligence. NTIS will use the information to ascertain that the organization seeking certification is a legitimate business performing the functions it claims to be performing.
- Authorized Contact Person—Collection of each respondent's authorized contact person will expedite the certification process by permitting NTIS to contact the identified contact person without first having to spend

time identifying the correct person during the certification process.

• Authorized Contact Person's Phone Number and Email Address (if different than that collected for the organization)—Collection of this information is necessary to allow NTIS to contact the person if questions arise during review of the Certification Form.

With these changes to the collection, and based also on its experience in administering the temporary certification program under the Interim Final Rule, NTIS expects the burden hours per respondent to increase from two hours to two and one-half hours, and will increase the cost per respondent in the form of a certification fee from $200 to $400. NTIS expects to receive approximately 550 Certification Forms, for a total burden of 2,200 hours and a total cost to the public of $220,000.

The ''Limited Access Death Master File (LADMF) Systems Safeguards Attestation Form'' would require accredited certification bodies to attest that a party seeking to be certified to access Limited Access DMF has systems, facilities, and procedures in place as required under § 1110.102(a)(ii) of this part. NTIS expects the additional burden hours for filling out this form to range from 2 hours to 200 hours, at a cost ranging from $270–$27,000. NTIS bases this estimated range on an average senior auditor rate of $135/hour, and assumes that the time required to fill out the form may or may not also include time required for an Accredited Certification Body to conduct a complete assessment under the proposed rule. Where a prior assessment has been conducted, for example, where a broader assessment has been conducted for other purposes, NTIS has assumed that the cost of the DMF-specific aspects may be small or even negligible. Conversely, where no prior assessment has been conducted within a three year period preceding a Person's application for certification under the proposed rule, NTIS has assumed that the cost of a complete assessment will be greater, and will depend as well on the nature of an applicant's systems and its use of Limited Access DMF. NTIS has submitted this form to OMB for review and addition to the collection approved at control number 0692–0013.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of NTIS/Commerce, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. Comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, should be sent to OMB Desk Officer, New Executive Office Building, Washington, DC 20503, Attention: Jasmeet Seehra, or by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285, and to NTIS as set forth under **ADDRESSES**, above.

Notwithstanding any other provision of law, no person is required to comply with, and neither shall any 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 currently valid OMB Control Number.

**List of Subjects in 15 CFR Part 1110**

Certification program; Administrative appeal; Imposition of penalty; Fees.

Dated: December 19, 2014.

**Bruce Borzino,**

*Director.*

For reasons set forth in the preamble, the National Technical Information Service proposes to amend 15 CFR part 1110 as follows:

## PART 1110—CERTIFICATION PROGRAM FOR ACCESS TO THE DEATH MASTER FILE

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

**Authority:** Pub. L. 113–67, Sec. 203.

■ 2. Amend § 1110.2 by

■ a. Adding, in alphabetical order, the definition, ''Accredited Certification Body,'' and

■ b. Revising the definitions of ''Limited Access DMF'' and ''Person'' to read as follows:

### § 1110.2 Definitions used in this part.

* * * * *

*Accredited Certification Body.* An independent third party conformity assessment body that is not owned, managed, or controlled by a Person or Certified Person which is the subject of attestation or audit, and that is accredited, by an accreditation body under nationally or internationally recognized criteria such as ISO/IEC 27006–2011, ''Information technology—Security techniques—Requirements for bodies providing audit and certification of information security management systems,'' to attest that a Person or Certified Person has systems, facilities and procedures in place to safeguard DMF information.

* * * * *

*Limited Access DMF.* The DMF product made available by NTIS which includes DMF with respect to any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death. As used in this part, Limited Access DMF does not include an individual element of information (name, social security number, date of birth, or date of death) in the possession of a Person, whether or not certified, but obtained by such Person through a source independent of the Limited Access DMF. If a Certified Person obtains, or a third party subsequently provides to a Certified Person, death information (*i.e.,* the name, social security account number, date of birth, or date of death) independently, the information is not considered part of the Limited Access DMF if the NTIS source information is replaced with the newly provided information.

* * * * *

*Person.* Includes corporations, companies, associations, firms, partnerships, societies, joint stock companies, and other private organizations, and state and local government departments and agencies, as well as individuals.

■ 3. Revise the section heading of § 1110.100 to read as follows:

### § 1110.100 Scope; term.

* * * * *

■ 4. Revise § 1110.101 to read as follows:

### § 1110.101 Submission of certification; attestation.

(a) In order to become certified under the certification program established under this part, a Person must submit a completed certification statement and any required documentation, using the form NTIS FM161 with OMB Control Number 0692–0013, and its accompanying instructions at *https://dmf.ntis.gov,* together with the required fee.

(b) In addition to the requirements under paragraph (a) of this section, in order to become certified, a Person must submit a written attestation from an Accredited Certification Body that such Person has systems, facilities, and procedures in place as required under § 1110.102(a)(2) of this part. Such attestation must be based on the Accredited Certification Body's review or assessment conducted no more than three years prior to the date of submission of the Person's completed

certification statement, but such review or assessment need not have been conducted specifically or solely for the purpose of submission under this part.

■ 5. Amend § 1110.102 by revising paragraphs (a)(3) and (a)(4)(iv) to read as follows:

**§ 1110.102 Certification.**

(a) * * *

(3) Such Person agrees to satisfy such similar requirements; and

(4) * * *

(iv) Use any such deceased individual's DMF for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty.

* * * * *

■ 6. In subpart B of Part 1110, add §§ 1110.103, 1110.104, and 1110.105 to read as follows:

**§ 1110.103 Disclosure to a certified person.**

Disclosure by a Person certified under this part of Limited Access DMF to another Person certified under this part shall be deemed to satisfy the disclosing Person's obligation to ensure compliance with § 1110.102(a)(4)(i)–(iii).

**§ 1110.104 Revocation of certification.**

False certification as to any element of § 1110.102(a) shall be grounds for revocation of certification, in addition to any other penalties at law. A Person properly certified who thereafter becomes aware that the Person no longer satisfies one or more elements of § 1110.102(a) of this part shall immediately inform NTIS thereof in writing.

**§ 1110.105 Renewal of Certification.**

(a) A Certified Person may renew its certification status by submitting, on or before the date of expiration of the term of its certification, a completed certification statement in accordance with § 1110.101, together with the required fee, indicating on the form NTIS FM161 that it is a renewal, and also indicating whether or not there has been any change in any basis previously relied upon for certification.

(b) Except as may otherwise be required by NTIS, where a Certified Person seeking certification status renewal has, within a three-year period preceding submission under paragraph (a) of this section, previously submitted a written attestation under § 1110.101(b), or has within such period been subject to a satisfactory audit under § 1110.201, such Certified Person shall so indicate on the form NTIS FM161, and shall not be required to submit a written attestation under § 1110.101(b).

(c) A Certified Person who submits a certification statement, attestation (if required) and fee pursuant to § 1110.105(a) shall continue in Certified Person status pending notification of renewal or non-renewal from NTIS.

(d) A Person who is a Certified Person before [EFFECTIVE DATE OF THIS RULE] shall be considered a Certified Person under this part, and shall continue in Certified Person status until the date which is one year from the date of acceptance of such Person's certification by NTIS under the Temporary Certification Program, provided that if such expiration date falls on a weekend or a federal holiday, the term of certification shall be considered to extend to the next business day.

■ 7. Revise § 1110.200 to read as follows:

**§ 1110.200 Imposition of penalty.**

(a) *General.* (1) Any Person certified under this part who receives DMF information, including information about any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death, and who during such three-calendar-year period:

(i) Discloses such deceased individual's DMF information to any person other than a person who meets the requirements of § 1110.102(a)(1) through (3);

(ii) Discloses such deceased individual's DMF information to any person who uses the information for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty;

(iii) Discloses such deceased individual's DMF information to any person who further discloses the information to any person other than a person who meets the requirements of § 1110.102(a)(1) through (3); or

(iv) Uses any such deceased individual's DMF information for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty; and

(2) Any Person to whom such information is disclosed, whether or not such Person is certified under this part, who further discloses or uses such information as described in paragraphs (a)(1)(i) through (iv) of this section, shall pay to the General Fund of the United States Department of the Treasury a penalty of $1,000 for each such disclosure or use, and, if such Person is certified, shall be subject to having such Person's certification revoked.

(b) *Limitation on penalty.* The total amount of the penalty imposed under this part on any Person for any calendar year shall not exceed $250,000, unless such Person's disclosure or use is determined to be willful or intentional. For the purposes of this part, a disclosure or use is willful when it is a ''voluntary, intentional violation of a known legal duty.''

(c) *Disclosure to a Certified Person.* No penalty shall be imposed under paragraphs (a)(i) through(iii) of this section on a first Certified Person who discloses, to a second Certified Person, DMF information of any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death, where the sole basis for imposition of penalty on such first Certified Person is that such second Certified Person has been determined to be subject to penalty under this part.

■ 8. Revise § 1110.201 to read as follows:

**§ 1110.201 Audits.**

Any Person certified under this part shall, as a condition of certification, agree to be subject to audit by NTIS, or, at the request of NTIS, by an Accredited Certification Body, to determine the compliance by such Person with the requirements of this part. NTIS may conduct, or request that an Accredited Certification Body conduct, periodic scheduled and unscheduled audits of the systems, facilities, and procedures of any Certified Person relating to such Certified Person's access to, and use and distribution of, the Limited Access DMF. NTIS may conduct, or request that an Accredited Certification Body conduct, field audits (during regular business hours) or desk audits of a Certified Person. Failure of a Certified Person to submit to or cooperate fully with NTIS, or with an Accredited Certification Body acting pursuant to this section, in its conduct of an audit, or to pay an audit fee to NTIS, will be grounds for revocation of certification.

■ 9. Redesignate subpart D to part 1110 as subpart E, add a new subpart D, and revise the newly redesignated subpart E to read as follows:

## Subpart D—Administrative Appeal

**§ 1110.300 Appeal.**

(a) *General.* Any Person adversely affected or aggrieved by reason of NTIS denying or revoking such Person's certification under this part, or

imposing upon such Person under this part a penalty, may obtain review by filing, within 30 days (or such longer period as the Director of NTIS may, for good cause shown in writing, fix in any case) after receiving notice of such denial, revocation or imposition, an administrative appeal to the Director of NTIS.

(b) *Form of Appeal.* An appeal shall be submitted in writing to Director, National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312, ATTENTION DMF APPEAL, and shall include the following:

(1) The name, street address, email address and telephone number of the Person seeking review;

(2) A copy of the notice of denial or revocation of certification, or the imposition of penalty, from which appeal is taken;

(3) A statement of arguments, together with any supporting facts or information, concerning the basis upon which the denial or revocation of certification, or the imposition of penalty, should be reversed;

(4) A request for hearing of oral argument before the Director, if desired.

(c) *Power of Attorney.* A Person may, but need not, retain an attorney to represent such Person in an appeal. A Person shall designate any such attorney by submitting to the Director of NTIS a written power of attorney.

(d) *Hearing.* If requested in the appeal, a date will be set for hearing of oral argument before a representative of the Director of NTIS, by the Person or the Person's designated attorney, and a representative of NTIS familiar with the notice from which appeal has been taken. Unless it shall be otherwise ordered before the hearing begins, oral argument will be limited to thirty minutes for each side. A Person need not retain an attorney or request an oral hearing to secure full consideration of the facts and the Person's arguments.

(e) *Decision.* After a hearing on the appeal, if a hearing was requested, the Director of NTIS shall issue a decision on the matter within 120 days, or, if no hearing was requested, within 90 days of receiving the appeal. The decision of the Director of NTIS shall be made after consideration of the arguments and statements of fact and information in the Person's appeal, and the hearing of oral argument if a hearing was requested, but the Director of NTIS at his or her discretion and with due respect for the rights and convenience of the Person and the agency, may call for further statements on specific questions of fact or may request additional evidence in the form of affidavits on specific facts in dispute. After the original decision is issued, an appellant shall have 30 days (or a date as may be set by the Director of NTIS before the original period expires) from the date of the decision to request a reconsideration of the matter. The Director's decision becomes final 30 days after being issued, if no request for reconsideration is filed, or on the date of final disposition of a decision on a petition for reconsideration.

## Subpart E—Fees

### § 1110.400 Fees.

Fees sufficient to cover (but not to exceed) all costs to NTIS associated with evaluating Certification Forms and auditing, inspecting, and monitoring certified persons under the certification program established under this part, as well as appeals, will be published (as periodically reevaluated and updated by NTIS) and available at *https://dmf.ntis.gov.* NTIS will not set fees for attestations or audits by an Accredited Certification Body.

■ 10. Add subpart F to read as follows:

## Subpart F—Accredited Certification Bodies

Sec.

1110.500 Accredited certification bodies.
1110.501 Requirement for independence.
1110.502 Attestation by accredited certification body.
1110.503 Acceptance of accredited certification bodies.

### § 1110.500 Accredited certification bodies.

This subpart describes Accredited Certification Bodies and their accreditation for third party attestation and auditing of the information safeguarding requirement for certification of Persons under this part. NTIS will accept an attestation or audit of a Person or Certified Person from an Accredited Certification Body that is independent of that Person or Certified Person and that is itself accredited by a recognized accreditation body.

### § 1110.501 Requirement for independence.

(a) An Accredited Certification Body must be an independent third party certification body that is not owned, managed, or controlled by a Person or Certified Person that is the subject of attestation or audit by the Accredited Certification Body.

(1) A Person or Certified Person is considered to own, manage, or control a third party certification body if any one of the following characteristics applies:

(i) The Person or Certified Person holds a 10 percent or greater ownership interest, whether direct or indirect, in the third party certification body. Indirect ownership interest is calculated by successive multiplication of the ownership percentages for each link in the ownership chain;

(ii) The third party certification body and the Person or Certified Person are owned by a common ''parent'' entity;

(iii) The Person or Certified Person has the ability to appoint a majority of the third party certification body's senior internal governing body (such as, but not limited to, a board of directors), the ability to appoint the presiding official (such as, but not limited to, the chair or president) of the third party certification body's senior internal governing body, and/or the ability to hire, dismiss, or set the compensation level for third party certification body personnel; or

(iv) The third party certification body is under a contract to the Person or Certified Person that explicitly limits the services the third party certification body may perform for other customers and/or explicitly limits which or how many other entities may also be customers of the third party certification body.

### § 1110.502 Attestation by accredited certification body.

(a) In any attestation or audit of a Person or Certified Person that will be submitted to NTIS under this part, an Accredited Certification Body must attest that it is independent of that Person or Certified Person. The Accredited Certification Body also must attest that it has read, understood, and agrees to the regulations in this part. The Accredited Certification Body must also attest that it is accredited to a nationally or internationally recognized standard such as the ISO/IEC Standard 27006–2011 ''Information technology—Security techniques—Requirements for bodies providing audit and certification of information security management systems,'' or any other similar recognized standard for bodies providing audit and certification of information security management systems. The Accredited Certification Body must also attest that the scope of its accreditation encompasses the safeguarding and security requirements as set forth in this part.

(b) Where a Person seeks certification, or where a Certified Person seeks renewal of certification or is audited under this part, an Accredited Certification Body may provide written attestation that such Person or Certified Person has systems, facilities, and procedures in place as required under § 1110.102(a)(2). In so attesting, an Accredited Certification Body may reference ''Limited Access Death Master File (LADMF) Certification Program

Publication 100,'' guidelines published by NTIS and available at *https://dmf.ntis.gov.* Such attestation must be based on the Accredited Certification Body's review or assessment conducted no more than three years prior to the date of submission of the Person's or Certified Person's completed certification statement, and, if an audit of a Certified Person by an Accredited Certification Body is required by NTIS, no more than three years prior to the date upon which NTIS notifies the Certified Person of NTIS's requirement for audit, but such review or assessment or audit need not have been conducted specifically or solely for the purpose of submission under this part.

(c) Where review or assessment or audit by an Accredited Certification Body was not conducted specifically or solely for the purpose of submission under this part, the written attestation or assessment report (if an audit) shall describe the nature of that review or assessment or audit, and the Accredited Certification Body shall attest that on the basis of such review or assessment or audit, the Person or Certified Person has systems, facilities, and procedures in place as required under § 1110.102(a)(2). In so attesting, an Accredited Certification Body may reference ''Limited Access Death Master File (LADMF) Certification Program Publication 100,'' guidelines published by NTIS and available at *https://dmf.ntis.gov.*

(d) Notwithstanding paragraphs (a) through (c) of this section, NTIS may, in its sole discretion, require that review or assessment or audit by an Accredited Certification Body be conducted specifically or solely for the purpose of submission under this part.

**§ 1110.503 Acceptance of accredited certification bodies.**

(a) NTIS will accept written attestations and assessment reports from an Accredited Certification Body that attests, to the satisfaction of NTIS, as provided in § 1110.502.

(b) NTIS may decline to accept written attestations or assessment reports from an Accredited Certification Body, whether or not it has attested as provided in § 1110.502, for any of the following reasons:

(1) When it is in the public interest under Section 203 of the Bipartisan Budget Act of 2013, and notwithstanding any other provision of this part;

(2) Submission of false or misleading information concerning a material fact(s) in an Accredited Certification Body's attestation under § 1110.502;

(3) Knowing submission of false or misleading information concerning a material fact(s) in an attestation or assessment report by an Accredited Certification Body of a Person or Certified Person;

(4) Failure of an Accredited Certification Body to cooperate in response to a request from NTIS verify the accuracy, veracity, and/or completeness of information received in connection with an attestation under § 1110.502 or an attestation or assessment report by that Body of a Person or Certified Person. An Accredited Certification Body ''fails to cooperate'' when it does not respond to NTIS inquiries or requests, or it responds in a manner that is unresponsive, evasive, deceptive, or substantially incomplete; or

(5) Where NTIS is unable for any reason to verify the accuracy of the Accredited Certification Body's attestation.

[FR Doc. 2014–30199 Filed 12–29–14; 8:45 am]

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## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1307

**[Docket No. CPSC–2014–0033]**

### Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** Section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), requires the United States Consumer Product Safety Commission (Commission or CPSC) to convene a Chronic Hazard Advisory Panel (CHAP) to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles and to provide recommendations to the Commission regarding whether any phthalates or phthalate alternatives other than those already permanently prohibited should be prohibited. The CPSIA requires the Commission to promulgate a final rule after receiving the final CHAP report. The Commission is proposing this rule pursuant to section 108(b) of the CPSIA.

**DATES:** Submit comments by March 16, 2015.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC–2014–0033, by any of the following methods:

*Electronic Submissions:* Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

*Written Submissions:* Submit written submissions in the following way: Mail/Hand delivery/Courier, preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

*Instructions:* All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

*Docket:* For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number, CPSC–2014–0033, into the ''Search'' box, and follow the prompts.

**FOR FURTHER INFORMATION CONTACT:** Kent R. Carlson, Ph.D., Toxicologist, Division of Toxicology & Risk Assessment, Directorate for Health Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850–3213; email: *kcarlson@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Consumer Product Safety Improvement Act*

1. Statutory Prohibitions

Section 108 of the CPSIA establishes requirements concerning phthalates. The term ''phthalates'' generally refers to *ortho*-phthalate diesters (phthalate esters, phthalates), which are a class of organic compounds used primarily as plasticizers for polyvinyl chloride (PVC). Phthalates also are used as solvents and stabilizers for fragrances. Phthalates have been used in teethers, plastic toys, home furnishings, air fresheners, automobile interiors, cosmetics, medications, medical devices, and many other products.

Phthalates are also found in food, indoor air, outdoor air, household dust, soil, and other environmental media.

Section 108(a) of the CPSIA permanently prohibits the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any ''children's toy or child care article'' that contains concentrations of more than 0.1 percent of di(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or butyl benzyl phthalate (BBP). Section 108(b)(1) of the CPSIA prohibits on an interim basis (*i.e.,* until the Commission promulgates a final rule), the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of ''any children's toy that can be placed in a child's mouth'' or ''child care article'' containing concentrations of more than 0.1 percent of diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-*n*-octyl phthalate (DNOP). The CPSIA defines a ''children's toy'' as ''a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays.'' *Id.* Section 108(g)(1)(B). A ''child care article'' is defined as ''a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething.'' *Id.* Section 108(g)(1)(C). A ''toy can be placed in a child's mouth if any part of the toy can actually be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the children's product can only be licked, it is not regarded as able to be placed in the mouth. If a toy or part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth.'' *Id.* Section 108(g)(2)(B). These statutory prohibitions became effective in February 2009. The interim prohibitions remain in effect until the Commission issues a final rule determining whether to make the interim prohibitions permanent. *Id.* Section 108(b)(1).

2. Chronic Hazard Advisory Panel

Section 108(b)(2) of the CPSIA directs the CPSC to convene a CHAP ''to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles.'' Section 108(g) of the CPSIA defines a ''phthalate alternative'' as ''any common substitute to a phthalate, alternative material to a phthalate, or alternative plasticizer.''

Section 28 of the Consumer Product Safety Act (CPSA), requires a CHAP to consist of seven independent scientists appointed by the Commission from a list of nominees nominated by the president of the National Academy of Sciences (NAS). CHAP members must ''have demonstrated the ability to critically assess chronic hazards and risks to human health presented by the exposure of humans to toxic substances or as demonstrated by the exposure of animals to such substances.'' 15 U.S.C. 2077(b)(2). Additionally, CHAP members must not receive compensation from, or have any substantial financial interest in, any manufacturer, distributor, or retailer of a consumer product. *Id.* at 15 U.S.C. 2077(b)(1). Members of the CHAP may not be employed by the federal government, except the National Institutes of Health, the National Toxicology Program, or the National Center for Toxicological Research. *Id.*

Section 108(b)(2) directs the CHAP to recommend to the Commission whether any phthalates or phthalate alternatives other than those permanently prohibited should be declared banned hazardous substances. Specifically, section 108(b)(2) directs the CHAP to:

Complete an examination of the full range of phthalates that are used in products for children and shall—

- Examine all of the potential health effects (including endocrine-disrupting effects) of the full range of phthalates;
- consider the potential health effects of each of these phthalates both in isolation and in combination with other phthalates;
- examine the likely levels of children's, pregnant women's, and others' exposure to phthalates, based on a reasonable estimation of normal and foreseeable use and abuse of such products;
- consider the cumulative effect of total exposure to phthalates, both from children's products and from other sources, such as personal care products;
- review all relevant data, including the most recent, best-available, peer-reviewed, scientific studies of these phthalates and phthalate alternatives that employ objective data collection practices or employ other objective methods;
- consider the health effects of phthalates not only from ingestion but also as a result of dermal, hand-to-mouth, or other exposure;
- consider the level at which there is a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals and their offspring, considering the best available science, and using sufficient safety factors to account for uncertainties regarding exposure and susceptibility of children, pregnant women, and other potentially susceptible individuals; and
- consider possible similar health effects of phthalate alternatives used in children's toys and child care articles.

CPSIA section 108(b)(2)(B). The CHAP's examinations must be conducted *de novo,* and the findings and conclusions of any previous CHAP on this issue and other studies conducted by the Commission must be reviewed by the CHAP but are not to be considered determinative. *Id.*

Section 108(b)(2)(C) of the CPSIA requires the CHAP to complete its examination and final report within 2 years of the CHAP's appointment. In the final report, the CHAP is required to recommend to the Commission whether any ''phthalates (or combinations of phthalates)'' in addition to those permanently prohibited, including the phthalates covered by the interim prohibition or phthalate alternatives, should be declared banned hazardous substances.

3. Rulemaking

Section 108(b)(3) of the CPSIA requires the Commission to promulgate a final rule, pursuant to section 553 of the Administrative Procedure Act (APA), not later than 180 days after the Commission receives the final CHAP report. The Commission must ''determine, based on such report, whether to continue in effect the [interim] prohibition . . ., in order to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety . . .'' CPSIA section 108(b)(3)(A). Additionally, the Commission must ''evaluate the findings and recommendations of the Chronic Hazard Advisory Panel and declare any children's product containing any phthalates to be a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057), as the Commission determines necessary to protect the health of children.'' *Id.* Section 108(b)(3)(B).

*B. CHAP Process*

The CHAP held its first meeting on April 14–15, 2010. The CHAP met in public session seven times and met via teleconference (also open to the public) six times.[1] The meetings were held at the CPSC offices in Bethesda, MD, and also aired via webcast. A record of the CHAP's public meetings, including video recordings and information submitted to the CHAP, in addition to

[1] The CHAP met in one closed meeting as part of the peer review process, January 28–29, 2014.

the final CHAP report, are available on the CPSC Web site.[2]

At a July 26–28, 2010 meeting, the CHAP heard testimony from the public, including from federal agency representatives who discussed federal activities on phthalates. The CHAP also invited experts to present their latest research findings at the July 2010 and subsequent meetings. Members of the public who presented testimony to the CHAP at the July 2010 meeting included manufacturers of phthalates and phthalate alternatives, as well as representatives of nongovernmental organizations. In addition to oral testimony, the manufacturers and other interested parties submitted an extensive volume of toxicity and other information to the CHAP and/or the CPSC staff. All submissions given to CPSC staff were provided to the CHAP.

Although the CPSIA did not require peer review of the CHAP's work, at the CHAP's request, four independent scientists peer-reviewed the draft CHAP report. CPSC staff applied the same criteria for selecting the peer reviewers as is required for the CHAP members. Peer reviewers were nominated by the National Academy of Sciences. Peer reviewers did not receive compensation from, nor did they have a substantial financial interest in, any of the manufacturers of the products under consideration. In addition, the peer reviewers were not employed by the federal government, except the National Institutes of Health, the National Toxicology Program, or the National Center for Toxicological Research. The CHAP report was due to the Commission on April 13, 2012 based on the requirement in section 108(b)(2)(C) of the CPSIA. The CHAP submitted the final report to the Commission on July 18, 2014.

### *C. The Proposed Rule*

The Commission proposes this rule in accordance with the CPSIA's direction to follow section 553 of the APA. CPSC staff reviewed the CHAP report and provided the Commission with a briefing package that assessed the CHAP report and made recommendations for a notice of proposed rulemaking (NPR). The staff's briefing package is available on CPSC's Web site at *http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/ProposedRule-Phthalates-112514.pdf*. As discussed in this preamble, the Commission agrees with the staff's recommendations.

[2] *http://www.cpsc.gov/chap.*

## II. CHAP Report

### *A. Summary of the CHAP Report*

#### 1. Health Effects in Animals

As staff explained in their briefing package, the CHAP reviewed all of the potential health effects of phthalates. Although phthalates are associated with a number of adverse health effects, the CHAP considered effects on male reproductive development to be the most relevant for human risk assessment. This is, in part, because these effects constitute the ''most sensitive and most extensively studied endpoint'' for phthalates. (CHAP 2014; pp. 1–2, 12–13). In support of this decision, the CHAP noted that a 2008 National Research Council (NRC) report also recommended using male reproductive development effects as the basis for a cumulative risk assessment of phthalates. (CHAP, 2014; NRC, 2008). The CHAP explained that exposing pregnant female rodents to certain phthalates causes a suite of effects on the male reproductive tract in male pups, known as the ''phthalate syndrome in rats.'' The syndrome includes: malformations of the testes, prostate, and penis (hypospadias); undescended testes; reduced anogenital distance (AGD); and retention of nipples.[3] Male pups also have reduced fertility as adults. The incidence and severity of these effects increases with dose. In addition, the male fetus is the most sensitive, followed by juveniles and adults. The phthalate syndrome effects are due largely to the suppression of testosterone production (Foster 2006), as well as reduced expression of the insulin-like hormone 3 gene (CHAP 2014; Wilson et al. 2004; p. 16). Thus, the CHAP refers to these effects as ''antiandrogenic'' to reflect their effect on testosterone production. Not all phthalates cause antiandrogenic effects; only phthalates meeting certain structural criteria, termed ''active'' phthalates, are associated with the phthalate syndrome. (CHAP 2014; p. 16; Foster et al. 1980; Gray et al. 2000).

The CHAP, citing published reports, noted (CHAP 2014, p.2) an additional reason for focusing on effects on male reproductive development: is empirical evidence demonstrates that the effects of active phthalates on male reproductive development are additive (Hannas et al. 2011b; 2012; Howdeshell et al. 2007; 2008). That is, exposures to multiple phthalates at lower doses act in concert to produce the same effect as a higher dose of a single phthalate. The additive effects of different phthalates are significant because humans are exposed to multiple phthalates simultaneously. (CHAP 2014; p. 2). The CHAP also noted that, in addition to phthalates, other chemicals, including certain pesticides and preservatives, add to the male reproductive effects of phthalates. (CHAP 2014; pp. 26–27, p. D–26; Rider et al. 2010).

The CHAP also reviewed available toxicity data on six phthalate alternatives. (CHAP 2014; p. 22). The CHAP found none of the alternatives to be antiandrogenic, that is, causing effects consistent with the phthalate syndrome. Therefore, because these phthalate alternatives did not contribute to the cumulative antiandrogenic effect, the CHAP assessed the potential risks of phthalate alternatives, as well as non-antiandrogenic phthalates, in isolation. These assessments were based on the most sensitive health endpoint[4] for each chemical, such as liver toxicity, for assessing risk. (CHAP 2014, pp. 121–142).

#### 2. Health Effects in Humans

The CHAP noted that the phthalate syndrome in rats resembles the ''testicular dysgenesis syndrome'' (TDS) in humans. (CHAP 2014, pp. 2, 28). TDS includes poor semen quality, reduced fertility, testicular cancer, undescended testes, and hypospadias.[5] After reviewing all of the available studies on associations between phthalate exposure and human health (CHAP 2014, pp. 27–33; Appendix C), the CHAP noted that two of three studies found an association between prenatal or neonatal phthalate exposure and reduced anogenital distance[6] in male infants. Several studies also found associations between prenatal or neonatal exposure and neurobehavioral effects in children. These effects included reductions in mental and psychomotor development and increases in attention deficits and behavioral symptoms. The CHAP cited several studies that found associations between phthalate exposure in adult males and reduced sperm quality and infertility. (Reviewed in CHAP 2014, p. C–8).

Based on this information, the CHAP concluded that there is a growing body of studies reporting associations between phthalate exposure and human health. (CHAP 2014, p. 27). Many of the reported health effects are consistent with testicular dysgenesis syndrome in

[3] Nipple retention does not normally occur in rodents, as it does in humans.

[4] That is, the effect occurring at the lowest dose.

[5] A malformation of the penis.

[6] Distance between the anus and genitals, which is greater in males than in females.

humans. (CHAP 2014, p. 28). However, the CHAP acknowledged the limitations of these studies, noting that the epidemiological studies were not designed specifically to provide information on sources of exposure or the relative contributions of different phthalates. Furthermore, the studies were limited by simultaneous human exposure to multiple phthalates and other environmental chemicals and by the study design. (CHAP 2014, pp. 2–3).

3. Human Phthalate Exposure

The CHAP assessed human exposure to phthalates by two different, but complementary, methods: human biomonitoring (HBM) and exposure scenario analysis. HBM relies on measurements of phthalate metabolites in human urine to estimate phthalate exposure. (CHAP 2014, pp. 34–48; Appendix D). The HBM method provides good estimates of total exposure based on empirical measurements (CHAP 2014, p. 6, 75, E1–38; Clark et al. 2011), but the method does not provide information on sources of exposure. The CHAP used two data sources for HBM—each will be described in turn. The National Human Health and Nutrition Survey (NHANES), which is conducted by the U.S. Department of Health and Human Services, periodically measures phthalates and other chemicals in human urine and blood in a statistically representative sample of thousands of U.S. residents. The CHAP used data from NHANES to estimate daily exposures to various phthalates in pregnant women and women of reproductive age. (CDC 2012). NHANES does not measure phthalate metabolites in children younger than 6 years old. Therefore, the CHAP used measurements from an NIH- and EPA-funded study of mother-child pairs, the Study for Future Families (SFF), to obtain exposure estimates for infants. (Sathyanarayana et al. 2008a; 2008b). The SFF study also provided additional data for the mothers, both before and after they gave birth.

The CHAP also found, based on the HBM studies, that ''exposure to phthalates in the United States (as worldwide) is omnipresent.'' (CHAP 2014, p. 37). Virtually all Americans are exposed simultaneously to multiple phthalates. (CHAP 2014, p. 37). Based on NHANES data, pregnant women have median exposures that are roughly similar to those of women of reproductive age. (CHAP 2014, Table 2.7, page 45). Based on the SFF data, infants have threefold to fourfold greater median exposures than their mothers. (CHAP 2014, Table 2.7, p. 45).

The second method that the CHAP used to assess human exposure was through analyzing numerous exposure scenarios. The CHAP used the scenario-based method because that method provides information on sources of exposure. (CHAP 2014, pp. 49–60, Appendix E1). Thus, the scenario-based method complements the information obtained from the HBM method, which provides estimates of total exposure. The CHAP estimated exposure from individual sources using data on phthalate levels in products and environmental media, migration rates, and product use information. (CHAP 2014, pp. 49–60; Appendices, E1, E3).

For most phthalates, the CHAP found that food, rather than children's toys or child care articles, provides the primary source of exposure to both women and children. (CHAP 2014, pp. 52–53, Table 2.1). For example, DINP exposure to infants and children is primarily from diet, although mouthing of DINP-containing toys or contact with DINP-containing toys and child care articles may contribute to the overall exposure. (CHAP 2014, Figure 2.1, page 59; Table E1–23, page E1–32; and Table E1–24, page E1–36). The CHAP also found that personal care products (cosmetics) are a major source of exposure to diethyl phthalate (DEP) and dibutyl phthalate (DBP) (*id.*). Indoor air and household dust are also major sources of diethyl phthalate (DEP), dibutyl phthalate (DBP), and butyl benzyl phthalate (BBP) (*id.*).

4. Risk

a. Cumulative Risk Assessment Generally

Section 108(b)(2)(B)(iv) of the CPSIA directed the CHAP specifically to ''consider the cumulative effect of total exposure to phthalates, both from children's products and from other sources.''

Cumulative risk assessment (CRA) generally refers to the combined effects of multiple environmental stressors. (Sexton and Hattis, 2007). CRA may combine different types of hazards, such as air pollution combined with psychological stress. More commonly, CRA includes mixtures of different chemicals. Chemical mixtures may be complex mixtures, such as air pollution or combustion emissions. Mixtures may include unrelated chemicals or, in the case of phthalates, a family of closely related chemicals. Human exposure to phthalates is a ''coincidental'' exposure, meaning that different individuals are exposed to phthalates in different proportions.

Section 108(b)(2)(B)(ii) of the CPSIA also directed the CHAP to ''consider the potential health effects of each of [the specified] phthalates both in isolation and in combination with other phthalates.'' Components of a mixture may interact in different ways regarding health risks. For example, suppose two chemicals produce the same health effect in animals. Furthermore, assume that 1 mg of *A* affects 10 percent of animals tested, and 1 mg of *B* affects 15 percent of animals. If the effects of the mixture are ''dose additive,'' then 25 percent of animals would be affected. In the case of phthalates, there is evidence in animal studies that the effects are ''dose additive.'' (Howdeshell *et al.,* 2007; Howdeshell *et al.,* 2008; Hannas *et al.,* 2011b; Hannas *et al.,* 2012). In other words, the whole equals the sum of its parts. Dose additivity does not necessarily apply in all cases. With other mixtures, the effects could be less than, or more than, dose additive. The process of performing a CRA differs in several respects from that of single-chemical risk assessment. One key difference is the choice of health endpoint. Risk assessments for chemicals in isolation are usually based on the most sensitive health effect. The most sensitive endpoint is the one that is observed at the lowest dose or has the greatest risk at a given dose. CRAs are generally based on a health effect that is common to the components of the mixture. The common health endpoint is not necessarily the most sensitive health endpoint for each of the mixture components.

b. Cumulative Risk and Risk in Isolation—Hazard Index

As required by section 108(b)(2)(B)(ii) of the CPSIA, the CHAP assessed the potential risks from phthalates in isolation and in combination with other phthalates, that is, cumulative risk. The CHAP chose antiandrogenic effects on male reproductive development as the focus of the CHAP's cumulative risk assessment. Only antiandrogenic (*i.e.,* active) phthalates cause male reproductive developmental effects and, therefore, only active phthalates contribute to the cumulative risk of male developmental reproductive effects. (CHAP 2014, pp. 61–70). The CHAP applied the hazard index (HI) approach to assess the cumulative risk for antiandrogenic effects in males. The HI approach is widely used for chemical mixtures and other cumulative risk assessments. (Kortenkamp and Faust 2010; NRC 2008; Teuschler and Hertzberg 1995). Calculating the HI is a two-step process:

1. Calculate the ''hazard quotient'' (HQ) for each phthalate. The HQ is the exposure divided by the ''potency estimate for antiandrogenicity'' (PEAA).[7] The PEAA is an estimate of the level of exposure at which the risk of antiandrogenic effects is considered negligible. If the HQ is greater than one for a given phthalate, there may be a concern for antiandrogenic effects in the exposed population due to the effect of an individual phthalate.

$$HQ = \frac{Exposure}{PEAA} \quad (1)$$

2. The hazard index (HI) is the sum of the hazard quotients (HQs) for the phthalates of interest. If the HI is greater than one, there may be a concern for antiandrogenic effects in the exposed population due to the cumulative effects of phthalates.[8]

$$HI = HQ_1 + HQ_2 \cdots + HQ_n \quad (2)$$

The CHAP calculated the HI for each individual in two populations of interest: (1) Pregnant women, and (2) children up to 36 months old. Pregnant women represent exposure to the fetus, which is considered more sensitive than newborns, children, and adults.

The CHAP used three sets of PEAAs that were derived by different approaches. (CHAP 2014, p. 62, 64; Table 2.15). This was done to assess the effect of using different PEAAs on the overall conclusions. The CHAP report refers to these as cases 1, 2, and 3:

- Case 1: Published values used from a cumulative risk assessment for phthalates (Kortenkamp and Faust 2010);
- Case 2: Values derived by the CHAP based on relative potency comparisons across chemicals from the same study (Hannas et al. 2011b); and
- Case 3: Values from the CHAP's *de novo* literature review of reproductive and developmental endpoints based on the no observed adverse effect levels (NOAEL) in Table 2.1 of the CHAP report.

Results for the three sets of PEAAs were roughly similar; HIs were within 2-fold, although HIs were slightly lower for Case 3. (CHAP 2014, p. 65).

Using NHANES data, the CHAP found that pregnant women had median HIs of about 0.1 (0.09 to 0.14), while the 95th percentile HIs were about 5, depending on which set of PEAAs was used. Roughly 10 percent of pregnant women had HIs greater than one. (CHAP 2014, Table 2.16).

Using SFF data, the CHAP found that the mothers had median HIs about 0.1 (0.06 to 0.11), while the 95th percentiles were less than one (0.33 to 0.73). (CHAP 2014, Table 2.16). There was little difference between pre- and post-natal exposures. The CHAP report shows that up to 5 percent of women had HIs greater than one. For infants, HIs were about twofold greater than their mothers. Infants had median HIs about 0.2, while the 95th percentiles were between 0.5 and 1.0. About 5 percent of infants had HIs greater than one.

Based on these results, the CHAP concluded that there may be a concern for adverse effects from the cumulative effects of phthalates in individuals with a hazard index greater than one, representing up to 10 percent of pregnant women and up to 5 percent of infants. (CHAP 2014, p. 65).

Looking at the HQs for individual phthalates, the CHAP concluded: ''Clearly, the hazard quotient for DEHP dominates the calculation of the HI, as expected, with high exposure levels and one of the lowest PEAAs.'' (CHAP 2014, p. 65). Thus, DEHP (which the CPSIA permanently prohibits from use in children's toys and child care articles) contributes the most to the cumulative risk. (CHAP 2014, Table 2.16). This is due to a combination of exposure and potency. (CHAP 2014, p. 65). The CHAP found that the median HQs for DEHP range from 0.1 to 0.2, with 95th percentiles up to 12. DEHP contributed between 50 (case 2) and 90 percent (case 1) of the median HI in pregnant women (summarized in Table 1). For comparison, DBP, BBP, and DINP each contributed up to 8 percent of the HI in pregnant women (Table 1).

TABLE 1—PERCENT CONTRIBUTION OF INDIVIDUAL PHTHALATES TO THE CUMULATIVE RISK [a]

| | Case 1 | Case 2 | Case 3 |
|---|---|---|---|
| NHANES Pregnant Women: | | | |
| Diisobutyl phthalate, DIBP | 0.7 | 2.3 | <1.1 |
| Dibutyl phthalate, DBP | 7.1 | 7.7 | 1.1 |
| Butyl benzyl phthalate, BBP | 0.7 | 7.7 | 1.1 |
| Di(2-ethylhexyl) phthalate, DEHP | 85.7 | 53.8 | 77.8 |
| Diisononyl phthalate, DINP | 0.7 | 7.7 | 2.2 |
| SFF Infants: | | | |
| Diisobutyl phthalate, DIBP | 0.9 | 5.0 | <0.8 |
| Dibutyl phthalate, DBP | 9.1 | 15.0 | 2.5 |
| Butyl benzyl phthalate, BBP | 18.2 | 10.0 | 2.5 |
| Di(2-ethylhexyl) phthalate, DEHP | 81.8 | 55.0 | 91.7 |
| Diisononyl phthalate, DINP | 0.9 | 15.0 | 8.3 |

[a] Calculated from data in CHAP, 2014, Table 2.16. Based on median exposures.

[7] The PEAA is essentially similar to a ''reference dose'' (RfD) or ''acceptable daily intake'' (ADI), which are commonly used terms, except that the PEAA applies only to antiandrogenic effects. The RfD and ADI generally apply to the most sensitive health effect of a given chemical. RfD and ADI are estimates of a dose at which one could be exposed to for up a lifetime with a negligible risk of adverse effects.

[8] Having a HI greater than one does not necessarily mean that adverse effects will occur; however, this possibility cannot be ruled out.

In infants, DEHP also contributed the most to the cumulative risk. DEHP contributed between 50 and 90 percent of the median HI (Table 1). However, the relative contributions of other phthalates were somewhat greater in infants than in pregnant women. DINP contributed between 1 percent (case 1) and 15 percent (case 2) of the median HI. DBP and BBP contributed between 2 percent and 18 percent of the HI. (Table 1).

According to the CHAP, these results indicate that DEHP contributed between 50 and 90 percent of the cumulative risk from exposure to antiandrogenic phthalates. The HQs of DBP, BBP, and DINP were similar. (CHAP 2014, p. 65). DINP contributed between 1 percent and 15 percent of the cumulative risk. (Table 1).

Furthermore, the CHAP noted that consumers are exposed to other types of chemicals, such as parabens [9] and certain pesticides that also add to the total risk of antiandrogenic effects. (CHAP 2014, p. D–26). These additional chemicals may increase the risk slightly or, as a worst case, double the percentage of pregnant women with an HI greater than one. (*Id.*). The CHAP did not have data to estimate the effects of the additional chemicals in infants. (*Id.*).

c. Risks in Isolation—Margin of Exposure

As required by section 108(b)(2)(B)(ii) of the CPSIA, the CHAP also considered the risks of phthalates and phthalate alternatives in isolation. Risks in isolation are of particular importance for the phthalate alternatives and the non-antiandrogenic phthalates. The CHAP did not include these compounds in the cumulative risk assessment because they are not antiandrogenic, and therefore, do not contribute to the cumulative risk for male reproductive developmental effects. The CHAP used a margin of exposure (MoE) approach to assess the risks in isolation. (CHAP 2014, p. 4). The MoE is the ''no observed adverse effect level'' (NOAEL) of the most sensitive endpoint in animal studies divided by the estimated exposure in humans. Higher MoEs indicate lower risks. Generally, MoEs greater than 100 to 1,000 are adequate to protect public health. (CHAP 2014, p. 20).

DIDP and DNOP are subject to the interim prohibition on phthalates under section 108 of the CPSIA. The CHAP concluded that they are not antiandrogenic; their most sensitive health effect is liver toxicity. (CHAP 2014, pp. 94, 104). MoEs for DIDP range from 300 (modeling using conservative assumptions) to 10,000 (biomonitoring). (CHAP 2014, pp. 24, 104). DNOP was largely not detectable in biomonitoring studies; MoEs based on modeling (with conservative assumptions) are 1,800 or more. (CHAP 2014, pp. 24, 95). Because the MoEs in humans are likely to be very high, and thus adequate to protect public health, the CHAP did not find compelling data to justify maintaining the current interim bans on the use of DNOP and DIDP in children's toys and child care articles. The CHAP recommended that the interim prohibitions on DNOP and DIDP be lifted. (CHAP 2014, pp. 95, 104).

In addition to noting DINP's antiandrogenic characteristics, the CHAP also stated that DINP is associated with liver toxicity. (CHAP 2014, pp. 95–99). Furthermore, liver toxicity is the most sensitive health effect for DINP. Thus, to assess the adverse effects of DINP in isolation, the CHAP considered liver toxicity to calculate MoEs. The CHAP stated: ''Using the NOAEL of 15 mg/kg-d for systemic toxicity [liver toxicity], the MoE for infants ranged from 830 to 4,200. The MoE for women ranged from 1,600 to 15,000. MoEs exceeding 100–1000 are considered adequate for public health.'' (CHAP 2014, p. 99). Despite high MoEs associated with DINP, the CHAP nevertheless recommended a permanent ban on DINP in children's toys and child care articles, concluding that: ''DINP does induce antiandrogenic effects in animals, although at levels below that for other active phthalates, and therefore can contribute to the cumulative risk from other antiandrogenic phthalates.''

Exposure data on many of the nonregulated phthalates are limited. Considered in isolation, MoEs for DIBP were 40,000 or more. (CHAP 2014, p. 111). However, DIBP contributes to the cumulative risk, due to its antiandrogencity.

The CHAP noted that exposure data on phthalate alternatives are also limited. Estimates of mouthing exposure to children up to 3 years old are available for TPIB, DEHT, ATBC, and DINX. MoEs for mouthing exposure for TPIB, DEHT, ATBC, and DINX are greater than 5,000. (CHAP 2014, pp. 121–142). However, DEHT, ATBC, TOTM, and DEHA are high production volume chemicals. (*Id.*). TPIB, DEHA, DEHT, ATBC, and TOTM are used in many types of products found in the home. Thus, as the CHAP noted, human exposure may occur from other sources, in addition to mouthing by children. (*Id.*).

The CHAP found that, among the permanently banned phthalates, DBP and BBP had MoEs of 5,000 or more. (CHAP 2014, pp. 82–88). For DEHP, MoEs ranged from 30 to 3,000. (CHAP 2014, p. 91). The 95th percentile exposure to pregnant women had a MoE of 30, which is less than the minimum value of 100, based on biomonitoring. The 95th percentile exposure in infants had a MoE of 100, based on modeling and 170 for biomonitoring. (*Id.*). Thus, the CHAP found that some highly exposed pregnant women, more than 5 percent of the population, had DEHP exposures that may present a concern for adverse health effects. (*Id.,* p. 65). Furthermore, the CHAP noted that DEHP contributes more than half of the cumulative risk from phthalates. (Table 1; CHAP 2014, p. 65).

*B. The CHAP's Recommendations to the Commission*

1. Recommendations on Phthalates Permanently Prohibited by the CPSIA

The CHAP did not recommend any Commission action on DBP, BBP, or DEHP because these phthalates are already permanently prohibited by the CPSIA. (CHAP 2014, pp. 83–91). However, the CHAP recommended that U.S. agencies responsible for DBP, BBP, and DEHP exposures from all sources conduct the necessary risk assessments with a view to supporting risk management steps. (CHAP 2014, pp. 83–91).

2. Recommendations on Phthalates Prohibited by the CPSIA on an Interim Basis

a. Diisononyl Phthalate (DINP)

The CHAP recommended that DINP at levels greater than 0.1 percent should be permanently prohibited from use in children's toys and child care articles. (CHAP 2014, pp. 95–99). Although DINP is less potent than DEHP, or other active phthalates, the CHAP reasoned that DINP is antiandrogenic and contributes to the cumulative risk from phthalates. (*Id.*).

b. Di-n-octyl Phthalate (DNOP)

The CHAP concluded: ''DNOP does not appear to possess antiandrogenic potential; nonetheless, the CHAP is aware that DNOP is a potential developmental toxicant, causing supernumerary ribs, and a potential systemic toxicant, causing adverse effects on the liver, thyroid, immune system, and kidney. However, because the MoE in humans is likely to be very high, the CHAP does not find

[9] Parabens are antimicrobials commonly used in cosmetics.

compelling data to justify maintaining the current interim ban on the use of DNOP in children's toys and child care articles. Therefore, the CHAP recommends that the current ban on DNOP be lifted.'' (CHAP 2014, p. 95).

c. Diisodecyl Phthalate (DIDP)

The CHAP concluded: ''DIDP does not appear to possess antiandrogenic potential; nonetheless, the CHAP is aware that DIDP is a potential developmental toxicant, causing supernumerary ribs, and a potential systemic toxicant, causing adverse effects on the liver and kidney. However, because DIDP is not considered in a cumulative risk with other antiandrogens, its MoE in humans is considered likely to be relatively high. The CHAP did not find compelling data to justify maintaining the current interim ban on the use of DIDP in children's toys and child care articles. Therefore, the CHAP recommends that the current ban on DIDP be lifted . . .'' (CHAP 2014, pp. 100–105).

3. Recommendations on Phthalates Not Currently Prohibited by the CPSIA

The CHAP recommended that the Commission permanently prohibit the use of the following phthalates at levels greater than 0.1 percent in children's toys and child care articles: diisobutyl phthalate (DIBP) (CHAP 2014, pp. 110–112), di-*n*-pentyl phthalate (DPENP) (*id.,* pp. 112–113), di-*n*-hexyl phthalate (DHEXP) (*id.,* pp. 114–116), and dicyclohexyl phthalate (DCHP) (*id.,* pp. 116–118). These are antiandrogenic phthalates that adversely affect male reproduction development. The CHAP noted that current exposures to DIBP, DPENP, DHEXP, and DCHP are low and, therefore, ''. . . do not indicate a high level of concern.'' (CHAP 2014, p. 8). However, because they are active phthalates, they contribute to the cumulative risk from other antiandrogenic phthalates. Allowing their use in toys and child care articles would increase the cumulative risk to children. The CHAP also noted that DPENP is the most potent antiandrogenic phthalate. (CHAP 2014, pp. 112–113).

In addition, the CHAP recommended that the Commission prohibit the use of diisooctyl phthalate (DIOP) on an interim basis at levels greater than 0.1 percent until sufficient data are available. (CHAP 2014, pp. 118–119). DIOP has been detected, although rarely, in child care products. (Chen 1998). Although toxicity data on DIOP are limited, the CHAP concluded, ''. . . the isomeric structure of DIOP suggests that DIOP is within the range of the structure-activity characteristics associated with antiandrogenic activity.'' (CHAP 2014, pp. 118–119).

The CHAP did not recommend to CPSC any action on the use of di(2-propyl) heptyl phthalate (DPHP) in toys and child care articles, at this time. (CHAP 2014, pp. 120–121). However, the CHAP recommended that appropriate federal agencies obtain toxicity and exposure data for DPHP. The CHAP noted that most of the toxicity data are unpublished and were not available to the CHAP. DPHP does not appear to be antiandrogenic, based on limited information. However, the CHAP noted: ''Currently, there is an undetermined frequency and duration of exposures; however, analytical methods cannot differentiate DPHP metabolites from DIDP metabolites because they are closely related.'' The CHAP noted further that production levels of DPHP have increased in recent years, suggesting that human exposure may also be increasing. (*Id.,* p. 120).

The CHAP did not recommend Commission action on dimethyl phthalate (DMP) (CHAP 2014, pp. 105–107) or diethyl phthalate (DEP). (*Id.,* pp. 107–109). However, the CHAP recommended that the U.S. federal agencies responsible for DEP exposures from food, pharmaceuticals, and personal care products perform the necessary risk assessments with a view to supporting risk management steps. (*Id.,* p. 109).

4. Recommendations on Phthalate Alternatives

The CHAP found that data on the six phthalate alternatives reviewed by the CHAP are generally limited. (CHAP 2014, pp. 121–142). The CHAP noted that CPSC staff has found four of the alternatives—acetyl tributyl citrate (ATBC); di(2-ethylhexyl) terephthalate (DEHT); 1,2-cyclohexanedicarboxylic acid, diisononyl ester (DINX); and 2,2,4-trimethyl-1,3 pentanediol diisobutyrate (TPIB)—in many children's toys and child-care articles. (Dreyfus 2010). Two of the alternatives—di(2-ethylhexyl) adipate (DEHA) and tris(2-ethylhexyl) trimellitate (TOTM)—have not been identified by CPSC staff in toys or child care articles, thus far. (Dreyfus, 2010). For all of the phthalate alternatives, the CHAP recommended obtaining additional data on exposure from all sources because many of the alternatives have multiple uses. The CHAP also recommended obtaining additional toxicity data on TPIB, ATBC, DINX, and TOTM.

## III. CPSC Staff's Assessment of the CHAP Report

CPSC staff assessed the CHAP report, examining whether the CHAP met the requirements of the CHAP's charge and whether the CHAP report was otherwise scientifically sound in its methodology, findings and recommendations.

*A. Charge to the CHAP*

Section 108(b)(2)(B) of the CPSIA required the CHAP to ''. . . complete an examination of the full range of phthalates that are used in products for children. . . .'' To meet its charge, the CHAP reviewed all of the available toxicity data on 14 phthalates. The 14 phthalates included the six phthalates set forth in the CPSIA and eight additional phthalates selected on the basis of toxicity (*i.e.,* male developmental reproductive effects) and exposure potential (*e.g.,* availability of human biomonitoring data). The CPSIA also required the CHAP to consider the following:

- ''Examine all of the potential health effects (including endocrine disrupting effects) of the full range of phthalates.'' The CHAP examined all of the health effects associated with phthalates, including carcinogenicity, liver toxicity, and reproductive/developmental toxicity. (CHAP 2014, pp. 13–29; Appendices A–C). As discussed in detail below, the CHAP conducted its cumulative risk assessment based on male developmental reproductive effects. The phthalate syndrome is due largely to the inhibition of testosterone production in the male fetus, which is a type of endocrine disruption. The CHAP's cumulative risk assessment focused on male developmental reproductive effects. (CHAP 2014, pp. 69–70).
- ''Consider the potential health effects of each of these phthalates both in isolation and in combination with other phthalates.'' To assess the potential health effects of phthalates in isolation, the CHAP used the MoE based on the most sensitive endpoint for each phthalate. (CHAP 2014, pp. 69–70). To assess the potential health effects of phthalates in combination, the CHAP conducted a cumulative risk assessment, based on male developmental reproductive effects. (*Id.*).
- ''Examine the likely levels of children's, pregnant women's, and others' exposure to phthalates, based on a reasonable estimation of normal and foreseeable use and abuse of such products.'' The CHAP assessed exposure by two complementary methods. Biomonitoring studies provide good

estimates of total exposure to phthalates but do not provide information on the sources of exposure. (CHAP 2014, pp. 34–48). The scenario-based approach estimates exposure to specific products and sources of exposure, including toys, child care articles, and personal care products. (CHAP 2014, pp. 49–60; Appendices E1–E3).

• ''Consider the cumulative effect of total exposure to phthalates, both from children's products and from other sources, such as personal care products.'' The CHAP conducted a cumulative risk assessment, based on total phthalate exposure, as estimated from biomonitoring studies. (CHAP 2014; pp. 61–68; Appendix D).

• ''Review all relevant data, including the most recent, best-available, peer-reviewed, scientific studies of these phthalates and phthalate alternatives that employ objective data collection practices or employ other objective methods.'' The CHAP reviewed all of the available data on phthalates, including publications in peer-reviewed scientific journals; reports submitted by manufacturers to the U.S. EPA; [10] and authoritative reviews from agencies such as the Agency for Toxic Substances and Disease Registry (ATSDR), the European Chemical Agency (ECHA), the International Agency for Research on Cancer (IARC), Center for the Evaluation of Research on Human Reproduction (CERHR), National Toxicology Program (NTP); and the National Research Council (NRC). (CHAP, 2014, p. 12). In addition, the CHAP invited scientific experts to present their latest research in areas such as biomonitoring, epidemiology, phthalate syndrome, toxicology of phthalates mixtures, phthalates mode of action, and species differences. The CHAP also invited a co-author of an NRC report (NRC, 2009) to present the NRC panel's perspective on risk assessment methodology, especially as applied to phthalates risk assessment. Furthermore, the CHAP heard testimony from federal agency scientists, as well as scientists representing manufacturers of phthalates alternatives.

• ''Consider the health effects of phthalates not only from ingestion but also as a result of dermal, hand-to-mouth, or other exposures.'' The CHAP estimated phthalate exposure by two methods. Biomonitoring studies estimated total exposure, regardless of source or route of exposure. (CHAP 2014, pp. 34–48). The scenario-based approach estimated exposure to specific products and sources of exposure by all routes of exposure, including oral, dermal, inhalation, and hand-to-mouth. (CHAP 2014, pp. 49–60; Appendices E1–E3).

• ''Consider the level at which there is a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals and their offspring, considering the best available science, and using sufficient safety factors to account for uncertainties regarding exposure and susceptibility of children, pregnant women, and other potentially susceptible individuals.'' For antiandrogenic phthalates, the CHAP derived reference doses (PEAAs) that were specific for male developmental reproductive effects. (CHAP 2014, Table 2.15). For non-antiandrogenic phthalates and phthalate alternatives, the CHAP selected appropriate NOAELs that were based on the most sensitive endpoint. (*Id.,* pp. 79–142, Appendices A–B). The CHAP also recommended the use of additional uncertainty factors (safety factors) for selected compounds where the database was limited (ATBC and DEHA).

• ''Consider possible similar health effects of phthalate alternatives used in children's toys and child care articles.'' The CHAP considered all health effects associated with six phthalate alternatives and, where sufficient data were available, estimated the potential health risks based on the most sensitive health endpoint. (CHAP, 2014, pp. 121–142, Appendices A–B).

Furthermore, section 108(b)(2)(B) required the CHAP to perform its examination *de novo.* ''The findings and conclusions of any previous Chronic Hazard Advisory Panel on this issue and other studies conducted by the Commission shall be reviewed by the panel but shall not be considered determinative.'' Although the CHAP considered previous CHAP reports and CPSC staff reports, the CHAP also conducted its own review of the scientific literature (including studies conducted by phthalate manufacturers) and invited experts to present their most recent research. (CHAP, 2014, p. 12).

Finally, section 108(b)(2)(C) required the CHAP to ''make recommendations to the Commission regarding any phthalates (or combinations of phthalates) in addition to those identified in subsection (a) or phthalate alternatives that the panel determines should be declared banned hazardous substances.'' The CHAP completed its charge by making recommendations to prohibit additional phthalates (*id.,* pp. 110–117), make the interim prohibition of DINP permanent (*id.,* pp. 95–99), lift the interim prohibitions of DNOP (*id.,* pp. 91–94) and DIDP (*id.,* pp. 100–104), and prohibit DIOP on an interim basis (*id.,* pp. 118–119).

The staff concluded that the CHAP fully met the charge in section 108 of the CPSIA.

*B. Selection of Phthalates and Phthalates Alternatives*

The CHAP selected phthalates for inclusion in its examination based on the following non-exclusive criteria: inclusion in the CPSIA, availability of human biomonitoring data, potential for exposure, and evidence of male developmental reproductive toxicity. (CHAP, 2014, pp. 22–23):

• Six phthalates subject to the CPSIA—DBP, BBP, DEHP, DNOP, DINP, and DIDP;

• Availability of biomonitoring data—DMP, DEP, DIBP, in addition to the six phthalates subject to the CPSIA;

• Increasing production, which suggests increasing exposure—DPHP; and

• Ability to induce male developmental reproductive effects—DIBP, DPENP, DHEXP, and DCHP. (*Id.,* p. 16).

The CPSC staff concurs with the CHAP's selection of phthalates because the 14 phthalates that the CHAP reviewed include phthalates with high exposure potential and phthalates that contribute to the cumulative risk for male developmental reproductive effects.

The CHAP selected six phthalate alternatives for study, either because they were known to be used in children's toys and child care articles (ATBC, DEHT, DINX, TPIB) (Dreyfus 2010) or because they were considered likely to be used (DEHA, TOTM) (CHAP, 2014; p. 23; Versar/SRC, 2010a). CPSC staff recognizes that there is a broad range of potential phthalate alternatives (Versar/SRC, 2010a), including phthalates that are not prohibited by the CPSIA. Nonetheless, CPSC staff agrees with the CHAP's choice of phthalate alternatives because it includes all of the non-phthalate plasticizers known to be used in toys and child care articles (Dreyfus 2010; TAB B), as well as other commonly used plasticizers. After the CHAP completed its report, CPSC staff identified DPHP in children's toys; DPHP is an emerging phthalate that was included in the CHAP report.

*C. Selection of Health Endpoint*

After reviewing all of the available toxicity data on 14 phthalates, the CHAP selected male developmental reproductive toxicity as the critical endpoint for its cumulative risk assessment. (CHAP 2014, pp. 13). CPSC

[10] For example, toxicity data submitted under § 8(e) of the Toxic Substances Control Act.

staff supports the selection of male developmental reproductive toxicity for several reasons. Male developmental reproductive effects in animals are associated with many of the most common phthalates. For most of the active phthalates, these effects are the most sensitive health effect; that is, these effects are observed at lower doses than other adverse health effects (*see* CPSC staff and contractor reports at *http://www.cpsc.gov/chap*). Male developmental reproductive effects (phthalate syndrome) are of particular concern because they may adversely affect human reproduction. Furthermore, the phthalate syndrome in animals bears a striking resemblance to the testicular dysgenesis syndrome in humans. (Skakkebaek et al., 2001).

The availability of empirical evidence also supports the choice to base the cumulative risk assessment on male developmental reproductive effects because such evidence eliminates the need to make critical assumptions that might not be borne out. Specifically, empirical evidence demonstrates that mixtures of active phthalates interact in a dose-additive fashion with respect to developmental male reproductive effects. (Howdeshell et al., 2007, 2008; Hannas et al., 2011b, 2012). Thus, it was not necessary for the CHAP to make any assumptions regarding the effects of phthalate mixtures. Most other health effects of phthalates have not been studied with mixtures; performing a cumulative risk assessment on any other endpoint would require assumptions regarding the mode of action and possible mixture effects.

Furthermore, the male developmental reproductive effects of phthalates are well-studied. (Reviewed in Foster, 2006). These effects, which were first reported in 1980 (Foster et al., 1980), persist into adulthood, even in the absence of further exposure (Barlow and Foster, 2003; Barlow et al., 2004; McIntyre et al., 2001). Similar effects have been reported in multiple mammalian species, including guinea pigs (Gray et al., 1982), mice, (Gray et al., 1982; Moody et al., 2013; Ward et al., 1998), rabbits (Higuchi et al., 2003), and ferrets (Lake et al., 1976). Hamsters were resistant due to slow metabolism of the phthalate ester to the monoester, which is believed to be the active metabolite. Hamsters responded to the monoester, however. (Gray et al., 1982). The observation of similar effects in multiple species demonstrates that these effects are not unique to rats. Based on the CPSC chronic hazard guidelines, the CPSC staff regards active phthalates as ''probably toxic to humans,'' based on ''sufficient evidence'' in animal studies. (CPSC, 1992).

Other authors also have selected male developmental reproductive effects as the basis of cumulative risk assessments of phthalates. The U.S. Environmental Protection Agency (EPA) convened a National Research Council (NRC) committee to consider approaches to assessing the cumulative risk of phthalates; the committee recommended using male developmental reproductive effects as the basis for a cumulative risk assessment. (NRC, 2008). Additionally, two subsequent publications conducted cumulative risk assessments based on male developmental reproductive effects. (Benson, 2009; Christensen et al., 2014).

CPSC staff recognizes that a number of other health effects are associated with phthalates. (Reviewed in Babich, 2010). Although some phthalates are associated with cancer, cancer is only associated with a relatively small number of phthalates, and many of the cancers induced by phthalates are of uncertain relevance to humans. (CHAP, 2001; CPSC, 2002; Klaunig et al., 2003). Other effects, such as liver toxicity, are common to most phthalates; but there are little or no data available on mode of action or the effects of mixtures. Thus, there is less scientific basis for performing a cumulative risk assessment with liver toxicity as the critical endpoint.

Finally, a growing number of epidemiological studies have reported associations of phthalate exposure with adverse health effects in humans. (As cited in CHAP 2014, pp. 27–33, Appendix C). Many of these adverse health effects are consistent with the effects in animal studies. The staff concludes that the epidemiological studies, though not conclusive on their own, provide supporting evidence that the animal studies are relevant to humans.

Therefore, CPSC staff supports using male developmental reproductive effects as the basis for the CHAP's cumulative risk assessment due to the importance of the endpoint; the abundance of data, the known additive nature of phthalate mixtures regarding male developmental reproductive effects, and NRC's recommendation.

*D. Methodology*

1. Hazard Index

The CHAP chose the hazard index (HI) approach for its cumulative risk assessment because that index is widely accepted for this purpose. (Teuschler and Hertzberg, 1995). The National Research Council (NRC, 2008) recommended this approach for phthalates cumulative risk assessment. Two other publications on phthalates' cumulative risk also used the HI approach. (Benson, 2009; Christensen et al., 2014). ExxonMobil scientists [11] also recommended the HI approach to CPSC in 2010, before the CHAP met for the first time.

The CHAP found that up to 10 percent of pregnant women and up to 5 percent of infants, those with the highest exposure, have a HI greater than one. The portion of the population with a HI greater than one may be at risk for the adverse effects of phthalates. (EPA, 1993). This does not necessarily mean that anyone will suffer adverse effects; however, one cannot rule out the possibility of adverse effects. The greater the HI, the greater the risk.

Although the HI approach is widely accepted, the CHAP introduced a novel process to calculate the HI. The CHAP calculated hazard quotients (HQ) and a HI for each individual in the population of interest (*i.e.,* pregnant women or infants), and then derived distributions of the HI. This was necessary because each individual is exposed to phthalates in differing proportions. For example, some individuals may be exposed almost exclusively to a single phthalate, while others may be exposed to several phthalates in roughly equal proportion. After calculating the HQs and HIs for all individuals, the CHAP then generated frequency distributions for the HI. This process allowed the CHAP to estimate the average and 95th percentile of the HI, as well as the portion of the population with a HI greater than one.

The alternative to the CHAP's approach would be to calculate hazard quotients using summary data on metabolite levels, that is, median and 95th percentile levels (*e.g.,* Benson, 2009). This would have allowed the CHAP to estimate median and 95th percentile hazard quotients for each phthalate. Under this approach, the median hazard quotients are summed to calculate the average HI, which would be roughly similar to the median hazard quotient calculated as above. However, summing the 95th percentile values would overestimate the 95th percentile HI. Therefore, the CHAP introduced this novel process to calculate the hazard quotients and HI more accurately, especially at the upper-bound (*e.g.,* 95th percentile) exposures. Had the CHAP not applied this novel approach, the result would have been an overestimate

[11] ''Approach to Cumulative Risk,'' presented to the CPSC staff, March 2010. *http://www.cpsc.gov/PageFiles/125812/CummRiskExxon03232010.pdf.*

of the 95th percentile exposures and the percentage of pregnant women and infants with HI greater than one.

2. Margin of Exposure

The CHAP chose the margin of exposure (MoE) approach to assess potential health risks for phthalates and phthalate alternatives in isolation. The CHAP chose this approach, in part, due to the recommendation of a NRC report on risk assessment methodology (NRC, 2009). Like the HI approach, the MoE is also widely accepted. (*Id.*).

The MoE is the ratio of the no observed adverse effect level (NOAEL) to the estimated exposure. Generally, a MoE of 100 to 1,000 is needed to protect public health (EPA, 1993). The minimum value of the MoE depends on the compound. If a NOAEL has been established in animal (rather than human) studies, a MoE of 100 or greater is sufficient to protect public health (CPSC, 1992). If a NOAEL has not been established, and a LOAEL (lowest observed adverse effect level) is used instead, or if the available toxicity data for the chemical of interest is inadequate, then a MoE of 1,000 may be required. Based on the knowledge that adequate animal data are available and NOAELS have been established for most of the phthalates, staff believes, consistent with the CHAP report, that a MoE of 100 is sufficient for most of the compounds in the CHAP report. The CHAP recommended an additional uncertainty factor for the phthalate alternatives ATBC and DEHA. Staff concurs that an additional uncertainty factor for ATBC and DEHA is appropriate because of limitations in the available toxicity data.

The MoE approach is conceptually similar to the CPSC staff's default approach for assessing non-cancer risks (CPSC, 1992) and would lead to similar conclusions about risk. CPSC staff approves of the CHAP's selection of the MoE approach to assess the risks of phthalates and phthalate alternatives in isolation because the MoE approach leads to the same conclusion as the staff's default methodology.

3. Exposure Assessment

The CHAP assessed exposure by two complementary methods. Biomonitoring studies provide good estimates of total exposure to phthalates but do not provide information on the sources of exposure. (CHAP 2014, pp. 34–48). The scenario-based approach estimates exposure to specific products and sources of exposure, including toys, child care articles, and personal care products. (CHAP 2014, pp. 49–60; Appendices E1–E3). Staff concurs with the CHAP's use of these approaches to assess exposure for the reasons explained below.

The CHAP used exposure estimates from biomonitoring data as the basis for its cumulative risk assessment. CPSC staff considers biomonitoring to provide the best available estimates of total exposure because biomonitoring is based on empirical measurements in individuals. Furthermore, the NHANES study is a large statistically representative sample. In contrast, the alternative approach, scenario-based estimates, are subject to a number of assumptions and uncertainties. (CHAP, 2014, Appendix E). The method for estimating exposure from biomonitoring data has been in use since 2000 and was developed by an industry scientist. (David, 2000). The CHAP devoted considerable effort to discussing potential errors and bias in this methodology, having invited two experts (Stahlhut and Lorber) to address this issue at the December 2010 meeting. As discussed in the CHAP report, any errors in this methodology are relatively small and are unbiased (CHAP 2014, pp. 73–75). ''Unbiased'' means that any errors are equally likely to lead to overestimation or underestimation of risk.

The staff notes that the CHAP used the latest data available at the time the CHAP performed its analysis. Phthalate exposures in the U.S. population, as measured by biomonitoring, have remained essentially constant for about a 10-year period. (CDC, 2012; EPA, 2013). However, the most recent report from CDC shows that phthalate exposures are beginning to change as one might expect, as products are reformulated in light of concerns about phthalate toxicity. (CDC, 2013). The CDC report shows that exposure to DBP, BBP, and DEHP is declining, while exposures to DINP and DIBP are increasing. The decline in DEHP exposure may be due, in part, to concerns about its toxicity and replacement with other plasticizers. Exposure to DEP and DBP has declined somewhat, possibly due to reformulation of cosmetics and other products. (Zota et al., 2014). Staff has not assessed the effect of changing phthalate exposures on the HI.

4. Human Relevance of Animal Data

One source of uncertainty in any risk assessment is the use of animal data as the basis for estimating the risk to humans. Male developmental reproductive effects have been well-studied in rats. In addition, similar effects have been reported in multiple mammalian species, including guinea pigs (Gray et al., 1982), mice, (Gray et al., 1982; Moody et al., 2013; Ward et al., 1998), rabbits (Higuchi et al., 2003), and ferrets (Lake et al., 1976) (Lake et al. 1976). Hamsters were resistant to male developmental reproductive effects due to slow metabolism of the phthalate ester to the monoester, which is believed to be the active metabolite. Hamsters responded to the monoester, however. (Gray et al. 1982). The observation of similar effects in multiple species demonstrates that these effects are not unique to rats. This is not surprising because male reproductive development is essentially similar in all mammalian species (NRC, 2008).

In contrast to these findings, a single study in marmosets that exposed pregnant females to DBP did not lead to any adverse effects in male offspring (McKinnell et al., 2009). However, as with most primate studies, this study was limited by small numbers.

Similarly, in two recent studies in which fetal rat and mouse testes, or fetal human testicular tissue, were transplanted into laboratory animals and exposed to phthalates (Heger et al., 2012; Mitchell et al., 2012), only the rat testes responded to the phthalates. However, the human fetal tissue was generally past 14 weeks of gestation, which is outside the window of maximum sensitivity. Nevertheless, given the potential significance of these studies, the CHAP invited the principal investigators of both studies (Boekelheide and Sharpe) to present their findings at the November 2011 CHAP meeting. Both of these scientists stated that their studies were very preliminary and that it would be premature to use their results to support public health decisions.

Finally, a growing number of epidemiological studies have reported associations of phthalate exposure with adverse health effects in humans. (CHAP 2014, pp. 27–33). Many of these effects are consistent with male developmental effects observed in animal studies. The human studies, although not conclusive on their own, provide supporting evidence that the animal studies are relevant to humans. (CPSC, 1992). The consistency of the results of the epidemiological studies with the animal studies provides additional support for the relevance of the animal studies to humans.

To summarize, active phthalates cause testicular effects in multiple animal species. The animal studies are further supported by the results of epidemiological studies. CPSC staff concludes that the weight of the evidence overwhelmingly supports the conclusion that male developmental

reproductive effects in animals are appropriate for estimating risks to humans.

## IV. Commission Assessment of the CHAP Report's Recommendations for the Proposed Rule

As discussed in the staff's briefing package, staff assessed the recommendations of the CHAP. The Commission agrees with the staff's assessment and provides the following explanation.

### *A. Interim Prohibited Phthalates: DINP, DIDP, and DNOP*

Section 108(b)(3)(A) of the CPSIA requires the Commission to determine, based on the CHAP report, whether to continue in effect the interim prohibitions on children's toys that can be placed in a child's mouth and child care articles containing DINP, DIDP, and DNOP ''to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety.'' For each phthalate, the Commission must decide whether to make the interim prohibitions permanent.

Consistent with the CHAP and the statutory framework, the Commission considered both cumulative risk and risk in isolation. For active phthalates, that is, phthalates causing male developmental reproductive effects, the Commission considered the cumulative risk, which was based on the HI. Consistent with the CHAP report and the CPSC chronic hazard guidelines (CPSC, 1992), the Commission considers that the acceptable risk is exceeded when the HI is greater than one (CPSC, 1992). Thus, the Commission considers that an HI <1 is necessary ''to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety.''

For non-antiandrogenic phthalates and phthalate alternatives, the Commission considered the MoE, as estimated by the CHAP. MoEs greater than 100–1,000 are generally considered adequate to protect human health (EPA, 1993). As discussed above, the staff considers a MoE of 100 or more to be adequate if a NOAEL has been identified in animal studies (CPSC, 1992), which is the case for most of the compounds discussed by the CHAP. Thus, for the phthalates discussed in this section, the Commission considers a MoE of 100 or greater to be necessary ''to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety.''

#### 1. Di-n-octyl Phthalate (DNOP)

The CHAP recommended that the interim prohibition on DNOP not be continued (CHAP 2014, pp. 91–95). The CHAP concluded: ''DNOP does not appear to possess antiandrogenic potential'' (CHAP, 2014, pp. 24, 95), and therefore, DNOP does not contribute to the cumulative risk from other phthalates. Thus, the CHAP considered DNOP risks in isolation because DNOP is not antiandrogenic. As with virtually all chemicals, DNOP is associated with toxicological effects, including liver toxicity and developmental effects. The CHAP did not use biomonitoring data to estimate DNOP exposure because DNOP metabolites were undetectable in most individuals. Using the scenario-based approach, the CHAP estimated exposures to infants and toddlers ranging from 4.5 to16 μg/kg-d. The margins of exposure (MoEs) [12] ranged from 2,300 to 8,300. The CHAP considered an MoE of at least 100 to be adequate to protect human health from the potential effects of DNOP. The CHAP concluded that the MoE for DNOP was sufficiently high and that continuing the interim prohibition was unnecessary. Therefore, the CHAP recommended removing the interim prohibition on children's toys and child care articles containing DNOP.

The Commission considers that a MoE of 100 or greater is sufficient to protect human health with respect to DNOP. The Commission agrees with the CHAP's assessment of the potential health risks from DNOP because the MoEs are greater than 100. DNOP levels are so low that they are not detectable in about 90 percent of humans. (CHAP 2014, Table 2.6). Furthermore, DNOP is not antiandrogenic, and therefore, DNOP does not contribute to the cumulative risk from antiandrogenic phthalates. The Commission concludes that continuing the prohibition of DNOP is not necessary to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety. Accordingly, under the proposed rule, children's toys that can be placed in a child's mouth and child care articles containing DNOP would no longer be prohibited.

#### 2. Diisononyl Phthalate (DINP)

DINP is currently subject to an interim prohibition. The CHAP recommended that ''the interim prohibition on the use of DINP in children's toys and child care articles at levels greater than 0.1 percent be made permanent.'' (CHAP, 2014, pp. 95–99). DINP is associated with adverse effects on male development (antiandrogenicity). In addition, DINP acts in concert with other antiandrogenic phthalates, including the permanently banned phthalates, thereby contributing to the cumulative risk.

Multiple published studies confirm the antiandrogenicity of DINP (Adamsson et al., 2009; Boberg et al., 2011; Borch et al., 2004; Clewell et al., 2013; Gray et al., 2000; Hannas et al., 2011b; Hass et al., 2003; Masutomi et al., 2003; reviewed in NRC, 2008). Even though DINP is less potent, by perhaps twofold to tenfold, than DEHP (Gray et al., 2000; Hannas et al., 2011b), DINP contributes to the cumulative risk from all antiandrogenic phthalates. The CHAP estimated that DINP contributes 1 percent to 8 percent of the cumulative risk to pregnant women and 1 percent to 15 percent in infants (Table 1). The CHAP found that 10 percent of pregnant women and up to 5 percent of infants have a HI greater than one. The CHAP also estimated that allowing the use of DINP in children's toys and child care articles would increase DINP exposure to infants by about 13 percent. (CHAP 2014, Table E1–21).

The Commission notes that the CHAP assessed the risks of DINP both in isolation and in combination with other phthalates. Considered in isolation, staff concluded that DINP would not present a hazard to consumers because the MoE (830 to 15,000) is well in excess of 100. (CHAP, 2014, p. 99). This is consistent with previous work. (CHAP, 2001; CPSC, 2002). However, the Commission agrees with the CHAP that DINP is antiandrogenic and contributes to the cumulative risk. Specifically, the CHAP found that 10 percent of pregnant women and up to 5 percent of infants have a HI greater than one. Therefore, as discussed previously, the Commission concludes that the cumulative risk of male developmental reproductive effects should be considered ''to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety.''

The Commission agrees with the CHAP's recommendation to make permanent the prohibition on DINP because the Commission concludes that allowing the use of DINP in children's toys and child care articles would further increase the cumulative risk to male developmental reproductive development. Multiple studies indicate that DINP is antiandrogenic and contributes to the cumulative risk from phthalates. As discussed previously, the Commission considers that a HI <1 is

[12] The margin of exposure (MoE) is the ratio of the NOAEL to the estimated exposure.

necessary ''to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety.'' Therefore, to ensure a reasonable certainty of no harm with an adequate margin of safety to children, pregnant women, or other susceptible individuals (*i.e.,* male fetuses), the proposed rule would permanently prohibit children's toys and child care articles containing more than 0.1 percent of DINP.

The statute's interim prohibition on DINP applies only to children's toys that can be placed in a child's mouth,[13] which is narrower in scope than the permanent prohibitions on DEHP, DBP, and BBP in all children's toys.[14] The CHAP recommended that DINP be permanently prohibited in all children's toys but did not explain why the CHAP recommended expanding the prohibition on DINP to include all children's toys. However, the CHAP's recommendation is consistent with the scope of the permanently prohibited phthalates.

The proposed rule would permanently prohibit DINP in all children's toys and child care articles, rather than only children's toys that can be mouthed. The Commission believes that the expansion in scope is appropriate because exposure occurs from handling children's toys, as well as from mouthing. (CHAP, 2014, Appendix E1). The additional exposure from handling toys would add to the cumulative risk. Therefore, the Commission concludes that expanding the scope of the DINP prohibition to include all children's toys is necessary to ensure a reasonable certainty of no harm to children with an adequate margin of safety.

The European Commission (EC) directive on phthalates in toys and child care articles also distinguished between all children's toys and toys that can be mouthed, prohibiting DBP, BBP, and DEHP in all children's toys, and prohibiting DINP, DNOP, and DIDP in toys that can be mouthed. (EC, 2005). The directive cited greater uncertainty about hazards presented by DINP, DNOP, and DIDP as the reason for this distinction. (EC, 2005, paragraph 11). As discussed in the CHAP report, there are multiple studies related to the male developmental reproductive effects of DINP, many of which were published after 2005, the date of the ECdirective. Thus, the Commission concludes that because the CHAP report addresses uncertainties regarding the potential hazard associated with DINP, an expansion of the prohibition on DINP to all children's toys is appropriate.

Additionally, we expect that expanding the scope to all children's toys would have a minimal effect on manufacturers because few products would need to be reformulated to comply with the broader scope. (*See* Tab A of the staff's briefing package.) In practice, children's toys and toys that can be placed in a child's mouth all require testing for phthalates. The testing costs are the same in either case. The only change caused by expanding the scope to all children's toys is that toys too large to be mouthed could not be made with DINP.

3. Diisodecyl Phthalate (DIDP)

The CHAP recommended that the interim prohibition on DIDP not be continued. (CHAP, 2014, pp. 100–105). DIDP is not associated with antiandrogenicity. Thus, DIDP does not contribute to the cumulative risk from the antiandrogenic phthalates. As with virtually all chemicals, DIDP is associated with toxicological effects, including liver toxicity and developmental effects. The CHAP assessed the potential risks from DIDP in isolation. The CHAP concluded that the MoE for DIDP is relatively high (>100) and that there is no compelling reason to continue the interim prohibition.

The CHAP concluded: ''DIDP does not appear to possess antiandrogenic potential'' (CHAP, 2014, pp. 24, 104); therefore, DIDP does not contribute to the cumulative risk (CHAP 2014, p. 104). However, the CHAP stated that it is aware that DIDP is associated with other health effects in animal studies, including chronic liver and kidney toxicity and developmental effects (*e.g.,* supernumerary ribs). (CHAP 2014, pp. 100–105). The CHAP considered DIDP risks in isolation because DIDP is not antiandrogenic. The lowest NOAEL for DIDP was 15 mg/kg-d, based on liver effects. Using biomonitoring data, the CHAP estimated that human exposures range from 1.5 to 26 μg/kg-d. The MoEs range from 2,500 to 10,000 for median DIDP exposures and 586 to 3,300 for upper-bound exposures. Therefore, the CHAP recommended that the interim prohibition on children's toys and child care articles containing DIDP be lifted.

As discussed previously, the Commission considers that a MoE of 100 or greater is sufficient to protect human health with respect to DIDP. The Commission agrees with the CHAP's assessment of the potential health risks from DIDP because the MoEs are much greater than 100. DIDP exposure would need to increase by more than 250 times to exceed the acceptable level. Furthermore, DIDP is not antiandrogenic; and therefore, DIDP does not contribute to the cumulative risk from antiandrogenic phthalates. The Commission concludes that continuing the prohibition of DIDP is not necessary to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety. Accordingly, under the proposed rule, children's toys and child care articles containing DIDP would no longer be prohibited.

*B. Phthalates Not Prohibited by the CPSIA*

The CPSIA requires the Commission to ''evaluate the findings and recommendations of the Chronic Hazard Advisory Panel and declare any children's product containing any phthalates to be a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057), as the Commission determines necessary to protect the health of children.'' CPSIA section 108(b)(3)(B). The CHAP reviewed the potential health risks associated with eight phthalates that were not prohibited by the CPSIA. The CHAP recommended permanent prohibitions on four additional phthalates: DIBP, DPENP, DHEXP, and DCHP. The CHAP recommended an interim prohibition of DIOP. The CHAP did not recommend prohibitions on DMP, DEP, or DPHP; although the CHAP recommended additional study on DEP and DPHP.

Consistent with the CHAP report, the Commission considered both cumulative risk and risk in isolation. For active phthalates, that is, phthalates causing male developmental reproductive effects, the Commission considered the cumulative risk, which was based on the HI. Consistent with the CHAP report and the CPSC chronic hazard guidelines (CPSC 1992), the Commission considers that the acceptable risk is exceeded when the HI is greater than one (CPSC 1992). Thus, the Commission considers that a HI <1 is necessary ''to protect the health of children.''

For non-antiandrogenic phthalates and phthalate alternatives, the Commission considered the MoE, as estimated by the CHAP. MoEs greater than 100 to 1,000 are generally considered adequate to protect human health (EPA 1993). As discussed previously, staff considers a MoE of 100 or more to be adequate if a NOAEL has been identified in animal studies (CPSC 1992), which is the case for most of the

[13] CPSIA § 108(b)(1).

[14] CPSIA § 108(a).

compounds discussed by the CHAP. Thus, for the phthalates discussed in this section, the Commission considers a MoE of 100 or greater to be necessary ''to protect the health of children.''

1. Diisobutyl Phthalate (DIBP)

The CHAP recommended that diisobutyl phthalate (DIBP) should be permanently banned from use in children's toys and child care articles at levels greater than 0.1 percent. (CHAP 2014, pp. 110–112). DIBP is associated with adverse effects on male reproductive development and contributes to the cumulative risk from antiandrogenic phthalates. Furthermore, DIBP has been found in some toys and child care articles during compliance testing by CPSC. (*See* TAB B of staff's briefing package).

DIBP is similar in toxicity to DBP (CHAP 2014, pp. 24, 110–111), which is one of the phthalates subject to the CPSIA's permanent prohibition. DIBP was shown to be antiandrogenic in numerous studies and it acts in concert with other antiandrogenic phthalates (Howdeshell et al., 2008). The CHAP found that current exposures to DIBP are low. When considered in isolation, DIBP has a MoE of 3,600 or more (CHAP 2014, p. 111). DIBP contributes roughly 1 percent to 2 percent of the cumulative risk from phthalate exposure to pregnant women and 1 percent to 5 percent in infants (Table 7). However, the CHAP based its recommendation on cumulative risk.

The Commission agrees with the CHAP's recommendation for DIBP. Based on previous CPSC staff and contractor toxicity reviews (Versar/SRC, 2010c) and the CHAP's review, the Commission finds that there is sufficient evidence to conclude that DIBP is antiandrogenic and is able to contribute to the cumulative risk. The Commission also concludes that, applying the CPSC chronic hazard guidelines (CPSC, 1992), this phthalate is considered ''probably toxic'' to humans based on sufficient evidence in animal studies. Five percent to 10 percent of the population exceeds the negligible risk level (HI >1). Allowing the use of DIBP in children's toys and child care articles would further increase the cumulative risk. As discussed previously, the Commission considers that a HI <1 is necessary ''to protect the health of children.'' In addition, CPSC staff has identified DIBP in a small portion of toys and child care articles during routine compliance testing. Therefore, the proposed rule would permanently prohibit children's toys and child care articles containing more than 0.1 percent of DIBP. The Commission concludes that this action is necessary to protect the health of children because it would prevent current and future use of this antiandrogenic phthalate in toys and child care articles.

2. Di-n-pentyl Phthalate (DPENP)

The CHAP recommended that di-*n*-pentyl phthalate (DPENP) should be permanently banned from use in children's toys and child care articles at levels greater than 0.1 percent (CHAP pp. 112–113). DPENP is associated with adverse effects on male reproductive development and contributes to the cumulative risk from antiandrogenic phthalates. Furthermore, DPENP is the most potent of the antiandrogenic phthalates. The Commission agrees with the CHAP's recommendation for DPENP. Based on previous CPSC staff and contractor toxicity reviews (Patton, 2010) and the CHAP's review, the Commission concludes that there is sufficient evidence to conclude that DPENP is antiandrogenic and is able to contribute to the cumulative risk. The Commission also concludes that, applying the CPSC chronic hazard guidelines (CPSC, 1992), this phthalate is considered ''probably toxic'' to humans, based on sufficient evidence in animal studies. Furthermore, DPENP is roughly twofold to threefold more potent than DEHP. (Hannas et al., 2011a). Although CPSC staff has not detected DPENP in children's toys or child care articles, metabolites of DPENP have been detected in humans (Silva et al., 2010), indicating that some exposure to DPENP does occur. Moreover, prohibiting the use of DPENP would prevent its use as a substitute for other banned phthalates. Up to five percent of infants and up to 10 percent of pregnant women exceed the negligible risk level (HI >1). Allowing the use of DPENP in children's toys and child care articles would further increase the cumulative risk. As discussed previously, the Commission considers that a HI <1 is necessary ''to protect the health of children.'' Therefore, the proposed rule would permanently prohibit children's toys and child care articles containing more than 0.1 percent of DPENP. The Commission concludes that this action is necessary to protect the health of children because it would prevent current and future use of this antiandrogenic phthalate in toys and child care articles.

Recently, the EPA proposed a significant new use rule (SNUR) for DPENP (EPA, 2012). If finalized, the rule would require any company planning to manufacture or import DPENP to notify EPA before beginning this activity. EPA would review the potential health risks of DPENP and could impose restrictions. If EPA issues a final rule, the likelihood that manufacturers would produce DPENP may be reduced. However, a SNUR would not prevent the importation of products containing DPENP into the United States. Therefore, the Commission believes that the proposed prohibition of children's toys and child care articles containing concentrations of more than 0.1 percent of DPENP is still necessary to protect the health of children.

3. Di-n-hexyl Phthalate (DHEXP)

The CHAP recommended that di-*n*-hexyl phthalate (DHEXP) should be permanently banned from use in children's toys and child care articles at levels greater than 0.1 percent (CHAP pp. 114–116). DHEXP is associated with adverse effects on male reproductive development and may contribute to the cumulative risk from antiandrogenic phthalates.

The Commission agrees with the CHAP's recommendation for DHEXP. Based on previous CPSC staff and contractor toxicity reviews (Patton, 2010) and the CHAP's review, the Commission concludes that there is sufficient evidence to conclude that DHEXP is antiandrogenic and is able to contribute to the cumulative risk (*e.g.,* Foster et al., 1980). The Commission also concludes that, by applying the CPSC chronic hazard guidelines (CPSC, 1992), this phthalate may be considered ''probably toxic'' to humans based on sufficient evidence in animal studies. Up to five percent of infants and up to 10 percent of pregnant women exceed the negligible risk level (HI >1). Allowing the use of DHEXP in children's toys and child care articles would further increase the cumulative risk. As discussed previously, the Commission considers that a HI <1 is necessary ''to protect the health of children.'' Although CPSC staff has not detected DHEXP in toys and child care articles during routine compliance testing thus far, prohibiting children's toys and child care articles containing DHEXP would prevent its use in these products as a substitute for other banned phthalates. Therefore, the proposed rule would permanently prohibit children's toys and child care articles containing more than 0.1 percent of DHEXP. The Commission concludes that this action is necessary to protect the health of children because it would prevent future use of this antiandrogenic phthalate in toys and child care articles.

4. Dicyclohexyl Phthalate (DCHP)

The CHAP recommended that dicyclohexyl phthalate (DCHP) should be permanently banned from use in children's toys and child care articles at levels greater than 0.1 percent. (CHAP pp. 116–118). DCHP is associated with adverse effects on male reproductive development and contributes to the cumulative risk from antiandrogenic phthalates.

The Commission agrees with the CHAP's recommendation for DCHP. Based on previous CPSC staff and contractor reviews (Versar/SRC, 2010b) and the CHAP's review, the Commission concludes that there is sufficient evidence to conclude that DCHP is antiandrogenic and is able to contribute to the cumulative risk (*e.g.,* Foster et al., 1980). The Commission also concludes that, by applying the CPSC chronic hazard guidelines (CPSC, 1992), this phthalate is considered ''probably toxic'' to humans, based on sufficient evidence in animal studies. Up to five percent of infants and up to 10 percent of pregnant women exceed the negligible risk level (HI >1). Allowing the use of DCHP in children's toys and child care articles would further increase the cumulative risk. As discussed previously, the Commission considers that a HI <1 is necessary ''to protect the health of children.'' Although the CPSC staff has not detected DCHP in toys and child care articles during routine compliance testing thus far, prohibiting the use of DCHP would prevent its use as a substitute for other banned phthalates. The Commission concludes that this action is necessary to protect the health of children because it would prevent future use of this antiandrogenic phthalate in toys and child care articles.

5. Diisooctyl Phthalate (DIOP)

The CHAP recommended an interim prohibition for diisooctyl phthalate (DIOP). (CHAP 2014, pp. 118–119). DIOP has a chemical structure consistent with other antiandrogenic phthalates.

DIOP is a high production volume chemical (EPA 2006), that is, over a million pounds are produced or imported each year (Versar/SRC, 2010d). DIOP is approved for use in food contact applications. (CHAP 2014, pp. 118–119). DIOP was identified in a small number of child care articles in the past (Chen, 2002); although it has not been detected by CPSC in children's toys and child care articles since the CPSIA was enacted in 2008.

The possible antiandrogenicity of DIOP is a potential concern (CHAP 2014, pp. 118–119). However, the CHAP concluded that there is not sufficient evidence to support a permanent prohibition. The only developmental study on DIOP is an older study in which DIOP was administered by intraperitoneal injection, which is not relevant to consumer exposures. The study's authors reported the presence of soft tissue abnormalities, a type of birth defect; but there were insufficient details to assess whether the abnormalities could be related to the phthalate syndrome. (Versar/SRC, 2010d). The primary reason for suspecting antiandrogenic activity is DIOP's structural similarity to other active phthalates (CHAP 2014, p. 119).

The CHAP did not recommend a permanent prohibition because the CHAP concluded that existing data are insufficient to support a permanent ban. Although the CHAP recommended an interim prohibition, the CPSIA did not provide for an interim prohibition as an option for the Commission's rule under section 108. CPSIA section 108(b)(3). As discussed above, insufficient data exists to determine that a permanent prohibition of DIOP is necessary to protect the health of children. Thus, the Commission is not proposing any prohibition of products containing DIOP.

*C. Scope of Phthalate Prohibitions*

Currently, under section 108(a) of the CPSIA, the permanent phthalate prohibitions apply to ''any children's toy or child care article that contains concentrations of more than 0.1 percent'' of the permanently prohibited phthalates. In addition, under section 108(b)(1) of the CPSIA, the interim phthalate prohibitions apply to ''any children's toy that can be placed in a child's mouth or child care article that contains concentrations of more than 0.1 percent.'' Section 108(g)(1)(B) of the CPSIA defines a ''children's toy'' as ''a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays.'' Section 108(g)(1)(C) of the CPSIA defines a ''child care article'' as ''a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething.'' Finally, section 108(g)(2)(B) states that a ''toy can be placed in a child's mouth if any part of the toy can actually be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the children's product can only be licked, it is not regarded as able to be placed in the mouth. If a toy or part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth.''

Section 108(b)(3)(B) of the CPSIA requires the Commission to ''evaluate the findings and recommendations'' of the CHAP and consider whether to prohibit ''any children's product containing any phthalates'' if the Commission determines that this is ''necessary to protect the health of children.'' Action by the Commission under this subsection could result in extending the phthalates prohibition beyond children's toys and child care articles and could be taken for any or all of the phthalates the proposed rule would prohibit, including those that are permanently prohibited, were subject to the interim prohibition, or that would be prohibited by the proposed rule. A ''children's product'' is defined as a ''a consumer product designed or intended primarily for children 12 years of age or younger.'' 15 U.S.C. 2052(a)(2). Children's products that are not children's toys or child care articles that might contain phthalates, for example, include rainwear, footwear, backpacks, some school supplies, apparel containing elastic waistbands, and printed T-shirts and sweatshirts.

The CHAP report did not specifically discuss the possibility of expanding the scope of the phthalates prohibitions to children's products. That inquiry was not part of the CHAP's charge. CPSIA section 108(b)(2). However, all of the CHAP's recommendations to prohibit certain phthalates apply to ''children's toys and child care articles.''

In the CHAP's scenario-based exposure assessment, the CHAP initially considered assessing exposures to phthalates for some children's products that were not toys or child care articles.[15] The CHAP ultimately decided, however, to limit its analysis to exposure activity scenarios that were thought to contribute significantly to human exposure. Specifically, these exposure activity scenarios included mouthing of teethers and toys, and dermal exposure to play pens and changing pads (CHAP 2014, Table 2.1). The CHAP found that most phthalate exposure comes from food and beverages (CHAP, 2014, pp. 50–52). Mouthing teethers and toys may also contribute to total exposure (*See also,* CHAP 2014, Table E1–24).

The Commission is not proposing to expand the scope of the phthalates prohibitions to include all children's products. The Commission does not

[15] CPSC staff meeting with Dr. Lioy. May 3, 2011. *http://www.cpsc.gov//PageFiles/157051/Meeting%20Log%20050311.pdf.*

have sufficient information to assess the impact on the health of children from expanding the phthalates prohibition from children's toys and child care articles to include other children's products. In addition, the limited information available suggests that increased exposure to phthalates from most children's products outside children's toys and child care articles would be negligible. The Commission believes this for two reasons. First, the broader category of all children's products is likely to contain proportionately fewer products that contain phthalates. (Laursen et al., 2003). Second, the exposure activity patterns, in combination with the primary exposure route (dermal), would generally lead to lower exposures than with children's toys (CHAP, 2001, 2014; CPSC, 2002).

Based on the limited available data, the Commission notes that most children's products are not made of PVC and are not expected to contain phthalates. For example, most textiles contain less than 0.01 percent phthalates (Laursen et al., 2003). Thus, with a few possible exceptions, such as PVC sandals (CHAP, 2001; Tønning et al., 2009), the Commission does not expect other children's products to contribute significantly to phthalate exposure.

Determining the relative importance of various exposure activity pathways (*e.g.,* playing with plastic toys, sitting on a vinyl couch) can be challenging. For example, much more data are available on exposure from mouthing teethers and toys than dermal exposure (CHAP 2014, Appendix E1; (CHAP, 2001). Thus, regarding DINP, the CHAP concluded: ''Although dermal uptake of DINP may occur through prolonged contact of DINP-containing products with skin or mouth, data on the prevalence of DINP in consumer products are not available and there is a fundamental uncertainty concerning the magnitude of dermal DINP uptake. Therefore, estimation of potential dermal exposure to humans remains speculative.'' (CHAP, 2001, p. 3).

The Commission agrees that oral exposure to phthalates is generally considered more important than dermal exposure. (CHAP, 2001; Wormuth et al., 2006). Studies of children's mouthing activity demonstrate that children age 3 or younger primarily mouth their fingers, pacifiers, teethers, and toys. (EPA, 2011; Greene, 2002; Juberg et al., 2001). Mouthing of other articles is infrequent. (*Id.*). Mouthing times for pacifiers, teethers, and plastic toys are 12–15-fold and 20–64-fold higher than all other objects, including other children's products. (EPA, 2011). Mouthing activity declines rapidly after age 3 years. (Greene, 2002).

Because the Commission believes that increased exposure to phthalates from most children's products would be negligible, the Commission concludes that expanding the phthalate prohibition beyond children's toys and child care articles is not warranted.

*D. Concentration Limit*

Section 108(a) and (b)(1) of the CPSIA sets a concentration limit of 0.1 percent for the permanently and interim-prohibited phthalates in children's toys and child care articles. This is a statutory limit. However, if the Commission chooses to prohibit additional phthalates, the agency could choose to set a different limit for the additional phthalates, as well as for any interim-prohibited phthalates that are being permanently prohibited under this rulemaking. As discussed in the CHAP report:

> The CPSIA prohibits the use of certain phthalates at levels greater than 0.1%, which is the same level used by the European Commission. When used as plasticizers for polyvinyl chloride (PVC), phthalates are typically used at levels greater than 10%. Thus, the 0.1% limit prohibits the intentional use of phthalates as plasticizers in children's toys and child care articles but allows trace amounts of phthalates that might be present unintentionally. There is no compelling reason to apply a different limit to other phthalates that might be added to the current list of phthalates permanently prohibited from use in children's toys and child care articles.

(CHAP, 2014, p. 79). The CHAP found no compelling reason to support lowering or raising the concentration limit. The Commission agrees with the CHAP that the 0.1 percent limit is not risk-based; rather, the limit is based on practical considerations, that is, the desire to prohibit intentional phthalate use while allowing trace levels.

Therefore, the Commission concludes that there is no risk-based justification to change the limit from the 0.1 percent level specified in the CPSIA. In the absence of any information to support a different limit, the proposed rule would maintain the limit at 0.1 percent for the proposed prohibitions on DINP, DIBP, DPENP, DHEXP, and DCHP.

Deriving a risk-based limit would require additional analysis beyond the CHAP's scenario-based exposure assessment. This would be difficult because exposure by a given scenario is not necessarily proportional to the phthalate concentration in the product. The sources of uncertainty and data gaps in the CHAP's scenario-based assessment (CHAP 2014, Appendix E1) would still apply. Thus, it would be difficult to derive a risk-based level.

The Commission considers that the 0.1 percent limit is practical. A lower limit would make it more difficult to perform the testing required of third party laboratories, which may lead to increased testing costs. Compliance testing would also be more difficult.

## V. Description of the Proposed Rule

*Section 1307.1—Scope and Application*

Proposed § 1307.1 describes the actions that the proposed rule would prohibit. This provision tracks the language in section 108(a) of the CPSIA regarding the permanent prohibition and prohibits the same activities: manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of a children's toy or child care article that contains any of the prohibited phthalates.

*Section 1307.2—Definitions*

Proposed § 1307.2 provides the same definitions of ''children's toy'' and ''child care article'' found in section 108(g) of the CPSIA. ''Children's toy'' means a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays. ''Child care article'' means a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething. Although these definitions are stated in the CPSIA, the proposed rule text would restate them for convenience.

*Section 1307.3—Prohibition on Children's Toys and Child Care Articles Containing Specified Phthalates*

Proposed § 1307.3(a) states which products would be prohibited. For convenience, the proposed section would provide both the items that are subject to the CPSIA's existing permanent prohibition and the items that would be subject to prohibition under the proposed rule. Stating all prohibitions in this section will allow a reader of the CFR to be aware of all the CPSC's restrictions concerning phthalates.

Proposed paragraph (a) sets out the CPSIA's existing permanent prohibition that makes it unlawful to manufacture for sale, offer for sale, distribute in commerce, or import into the United States any children's toy or child care article that contains concentrations of more than 0.1 percent of DEHP, DBP, or BBP. The restriction on these products

is currently in place as a result of section 108(a) of the CPSIA. This statutory prohibition is not affected by the proposed rule but is merely restated in the proposed regulatory text.

Proposed paragraph (b) would prohibit the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any children's toy or child care article that contains concentrations of more than 0.1 percent of DINP, DIBP, DPENP, DHEXP, or DCHP. As explained above, in accordance with section 108(b)(2) of the CPSIA, the Commission appointed a CHAP that considered the effects on children's health of phthalates and phthalate alternatives as used in children's toys and child care articles. After completing its work, the CHAP presented the Commission with a report of its findings and recommendations. After reviewing the CHAP's report and making the appropriate determinations and evaluations, the Commission is proposing a rule in accordance with section 108(b)(3) of the CPSIA.

For the reasons explained in Section IV of this preamble, the Commission concludes that prohibiting children's toys and child care articles that contain more than 0.1 percent of DINP would ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety. DINP is currently subject to the CPSIA's interim prohibition. CPSIA section 108(b)(1). Proposed § 1307.3(b) would change the scope of regulation of DINP from the current interim scope of ''children's toys that can placed into a child's mouth'' [16] (and child care articles) to also include all children's toys. Based on the recommendations in the CHAP report, the Commission is not proposing to continue the interim prohibitions on DIDP and DnOP.

Additionally, proposed § 1307.3(b) would prohibit children's toys and child care articles containing four phthalates that are not currently subject to restrictions under the CPSIA: DIBP, DPENP, DHEXP, and DCHP. For the reasons stated in section IV of this preamble, the Commission concludes that prohibiting children's toys and child care articles containing more than 0.1 percent of DIBP, DPENP, DHEXP, or DCHP is necessary to protect the health of children.

[16] Section 108(g)(2)(B) of the CPSIA states that ''a toy can be placed in a child's mouth if any part of the toy can actually be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the children's product can only be licked, it is not regarded as able to be placed in the mouth. If a toy or part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth.''

## VI. Effective Date

The APA generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The Commission is proposing an effective date of 180 days after publication of the final rule in the **Federal Register**.

As discussed in Tab A of the staff's briefing package, the proposed rule is expected to have a minimal impact on manufacturers. The proposed rule would prohibit four additional phthalates—DIBP, DPENP, DHEXP, and DCHP—which currently are not widely used in children's toys and child care articles. Only DIBP has been detected in a small portion of toys tested by the staff. The proposed rule would also make the interim prohibition on DINP permanent and expand the scope from children's toys that can be place in a child's mouth to all children's toys (along with child care articles). Based on staff's testing results, to meet the proposed rule, a relatively small percentage of non-mouthable toys would need to be reformulated to remove DINP. To meet the statutory testing and certification requirements if the proposed rule were in place, testing laboratories would need to expand their procedures to include the four additional prohibited phthalates, which the staff believes would require minimal effort by testing laboratories. Therefore, none of the prohibitions in the proposed rule is likely to require more than 180 days for manufacturers and testing laboratories to become compliant. For these reasons, the Commission proposes an effective date of 180 days after publication of the final rule in the **Federal Register**.

## VII. Notice of Requirements

The CPSA establishes certain requirements for product certification and testing. Children's products subject to a children's product safety rule under the CPSA must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Certification of children's products subject to a children's product safety rule must be based on testing conducted by a CPSC-accepted third party conformity assessment body. *Id.* 2063(a)(2). The Commission must publish a notice of requirements (NOR) for the accreditation of third party conformity assessment bodies (or laboratories) to assess conformity with a children's product safety rule to which a children's product is subject. *Id* 2063(a)(3). Thus, the proposed rule for 16 CFR part 1307, ''*Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates,*'' when issued as a final rule, would be a children's product safety rule that requires the issuance of an NOR. The Commission previously published in the **Federal Register** an NOR for the phthalate-containing products prohibited by section 108 on August 10, 2011. (76 FR 49286). The codified listing for the NOR can be found at 16 CFR 1112.15(b)(31). If the Commission finalizes the proposed rule with prohibitions restricting phthalates that are not covered by the current NOR, the Commission would issue a new NOR that would include the additional phthalates. The NOR would notify manufacturers and testing laboratories of the additional requirements and would include a revised test method. Any revisions to the existing NOR will be done in a separate future rulemaking.

## VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the APA or any other statute, unless the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. U.S.C. 603 and 605. Small entities include small businesses, small organizations, and small governmental jurisdictions. After considering the economic impacts of this proposed rule on small entities, the Commission certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

### *A. Background*

As discussed above, the proposed rule would fulfill a requirement in section 108 of the CPSIA that the Commission issue a rule to determine whether the interim prohibitions established in section 108(b)(1) of the CPSIA should be made permanent and whether any children's product containing any phthalates that were not prohibited by the CPSIA should be declared a banned hazardous product. The proposed rule would lift the interim prohibitions for two of the three phthalates (DIDB and DNOP) and would permanently prohibit children's toys and child care articles containing more than 0.1 percent of the third phthalate (DINP). The proposed rule would also prohibit children's toys and child care articles containing more than 0.1 percent of any of four specified phthalates that were not prohibited by

the CPSIA (DIBP, DPENP, DHEXP, and DCHP).

*B. Small Entities To Which the Rule Would Apply*

Small entities would be subject to the proposed rule if they manufacture or import children's toys or child care articles that contain phthalates. These companies are already subject to the restrictions imposed by the CPSIA on children's toys and child care articles containing certain phthalates. The draft proposed rule would neither increase, nor decrease, the number of small entities to which the phthalate restrictions apply. More detailed information about the entities that likely manufacture or import children's toys and child care articles and would be considered small businesses under the criteria established by the Small Business Administration (SBA) is provided at Tab A of the staff's briefing package.

*C. Potential Impact on Small Businesses*

1. Impact From Meeting Substantive Requirements of the Proposed Rule

The proposed rule would impact which plasticizers are available to manufacturers for use in children's toys and child care articles. We discuss the anticipated impact from each aspect of the Commission's proposed action.

*Lifting restriction on DNOP and DIDP.* The proposed rule would end the CPSIA's interim restrictions on the use of DNOP and DIDP in children's toys and child care articles. Manufacturers would be free to use these two phthalates. Ending restrictions for these phthalates would benefit manufacturers if DNOP and DIDP are less costly than the alternatives or they impart other desirable attributes to the final product.

*Altering restriction on DINP.* The proposed rule would broaden the restrictions on DINP. The interim ban prohibits children's toys that can be placed in a child's mouth and child care articles that contain more than 0.1 percent of DINP. The proposed rule would extend the prohibition to all children's toys and child care articles regardless of whether the toy can be placed in a child's mouth. Manufacturers who were using DINP in toy components that could not be placed in a child's mouth would have to find an alternative for DINP in these applications. The Commission expects the impact of changing the prohibition on the use DINP to include children's toys that cannot be placed in a child's mouth would be limited to a small number of firms. A review of samples tested by CPSC staff indicated that of 725 samples that were found to contain phthalates through infrared screening techniques, fewer than 5 samples (or less than 1 percent) contained DINP but were probably too large to be placed in a child's mouth. (*See* Tab B of staff's briefing package). The percentage of all children's toys that could be impacted by broadening the restrictions on the use of DINP to all children's toys would be substantially less than 1 percent because the only samples reviewed in this analysis were those that were already found to contain phthalates using infrared screening techniques. This would be a small subset of all children's toys.

*Restricting four additional phthalates.* The proposed rule would also prohibit children's toys and childcare articles containing four additional phthalates: DIBP, DPENP, DHEXP, and DCHP. The prohibition on the use of these additional phthalates is not expected to have a significant impact on a substantial number of manufacturers because the CHAP found that three of these phthalates (DPENP, DHEXP, and DCHP) are not currently used in children's products and that although the fourth (DIBP) has been found in some toys, it ''is not widely used in toys and child care articles.'' (CHAP 2014, pp. 111,113,116, and 117). This aspect of the proposed rule is intended to prevent these phthalates from being used in children's toys and child care articles in the future.

*Summary of impact from meeting substantive requirements of proposal.* For the reasons described above, the Commission expects that few, if any, manufacturers would need to alter their formulations to comply with the proposed rule.

2. Impact From Third Party Testing to the Proposed Rule

The CPSIA requires manufacturers of children's products subject to a children's product safety rule to certify that their children's products comply with all applicable children's product safety rules based on the results of third party tests. 15 U.S.C. 2063(a)(2). Third party testing is only required for those components of children's toys and child care articles that are accessible and that could contain one or more of the prohibited phthalates. These third party testing requirements are set forth in the CPSIA and are unaffected by the proposed rule.

The CPSIA permanently prohibits children's toys and child care articles that contain concentrations of more than 0.1 percent of DEHP, DBP or BBP. This restriction is unaffected by the proposed rule. Thus, manufacturers of children's toys and child care articles currently must comply with the third party testing requirements to certify that their products do not contain more than 0.1 percent of DEHP, DBP, or BBP. Manufacturers of children's toys and child care articles currently must also certify, based on the results of third party tests, that their products do not contain more than 0.1 percent of the phthalates subject to the interim prohibitions (DINP, DIDP, and DNOP), unless the product is a children's toy that cannot be placed in a child's mouth. (The prohibitions on DEHP, DBP, and BBP apply regardless of whether a toy can be placed in a child's mouth).

a. Scope of Products That Must Be Tested

The proposed rule would not affect the scope of products subject to the third party testing requirement because even in the absence of the proposed rule, manufacturers of children's toys and child care articles that may contain accessible phthalates are required to certify those products based on third party testing.

*Lifting restriction on DNOP and DIDP.* Because the proposed rule would remove the interim prohibitions for DIDP and DNOP, manufacturers of children's toys and child care articles would no longer be required to certify that their products do not contain these phthalates. However, third party testing of children's toys and child care articles would still be required to ensure that these products do not contain concentrations of more than 0.1 percent for DEHP, DBP, and BBP.

*Altering restriction on DINP.* Under the proposed rule, manufacturers of children's toys that can be placed in a child's mouth and child care articles would need to continue to test to ensure that their products do not exceed concentrations of more than 0.1 percent for DINP. Additionally, under the proposed rule, manufacturers would have to certify, based on third party tests, that toys that cannot be placed in a child's mouth do not contain DINP. However, as noted above, these manufacturers are already required to test their products for DEHP, DBP, and BBP. The extension of the DINP prohibition would not require testing of additional products; the extension simply adds another phthalate for which certification is required when testing children's toys and child care articles that cannot be placed in the mouth.

*Restricting four additional phthalates.* Under the proposed rule, manufacturers of children's toys and child care articles

would have to certify that their products do not contain DIBP, DPENP, DHEXB, and DCHP in concentrations of greater than 0.1 percent based on third party tests. However, as noted above, these manufacturers are already subject to third party testing for DEHP, DBP, and BBP.

*Summary of impact of proposal on scope of testing.* Because children's toys and child care articles that may contain phthalates are already subject to the CPSIA's testing requirement to determine the presence of any of the phthalates that are prohibited by section 108(a) of the CPSIA, the proposed rule would not affect the scope of products that are subject to third party testing.

b. Proposed Rules's Impact on Cost of Testing

Under the proposed rule, manufacturers would need to test for the presence of four phthalates that they currently do not have to test for under the CPSIA's permanent and interim prohibitions. According to the Directorate for Laboratory Sciences, including the additional phthalates that would be prohibited by the proposed rule, DIBP, DPENP, DHEXP, and DCHP is not expected to increase significantly the cost to manufacturers for having a products third party test their products for phthalates. The same equipment and procedures for sample preparation and extraction could be used. Although the data analysis procedure would need to be modified to include the new phthalates, each of the additional phthalates can be isolated at unique elution times by gas chromatography and should not be difficult for qualified conformity assessment bodies to identify and quantify. (*See* Tab B of the staff's briefing package.)

Third party conformity assessment bodies will have to obtain eight phthalate analytic standard materials for calibration purposes for use during phthalate testing. This is a net increase of two over the six that are currently required. These additional analytic standards are expected to cost very little, especially on a per-test basis. The analytic standards cost about $3.50 per gram (based on prices by some suppliers on the Internet), but less than 50 milligrams of a standard is required per test batch. Therefore, the additional two standards that would be required by the proposed rule would increase the cost per test batch by about $0.35.[17] Multiple samples can be tested in one test batch. Therefore, the per-test cost of the additional phthalate standards would be less than $0.35 per test.

*D. Conclusion*

The CPSIA established prohibitions on children's toys and child care articles containing phthalates. The CPSIA also put in place requirements for third party testing and certification of children's products. As discussed above, because these requirements area already in place by statute and will continue regardless of the proposed rule, the Commission expects that the proposed rule's impact on small business would not be significant. Therefore, the Commission certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

## IX. Paperwork Reduction Act

The proposed rule does not include any information-collection requirements. Accordingly, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

## X. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a ''consumer product safety standard under [the Consumer Product Safety Act (CPSA)]'' is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. (Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.) Section 108(f) of the CPSIA is entitled, ''Treatment as Consumer Product Safety Standards; Effect on State Laws.'' That provision states that the permanent and interim prohibitions and any rule promulgated under section 108(b)(3) ''shall be considered consumer product safety standards under the Consumer Product Safety Act.'' That section further states: ''Nothing in this section of the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*) shall be construed to preempt or otherwise affect any State requirement with respect to any phthalate alternative not specifically regulated in a consumer product safety standard under the Consumer Product Safety Act.'' CPSIA section 108(f). This provision indicates that the preemptive effect of section 26(a) of the CPSA would apply to the proposed rule which does not include any requirements regarding phthalate alternatives.

## XI. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). Because this rule falls within the categorical exclusion, no environmental assessment or environmental impact statement is required.

## XII. List of References

This section provides a list of the documents referenced in this preamble.


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### List of Subjects in 16 CFR Part 1307

Consumer protection, Imports, Infants and children, Law enforcement, and Toys.

For the reasons discussed in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations by adding part 1307 to read as follows:

■ 1. Add Part 1307 to read as follows

## PART 1307—PROHIBITION OF CHILDREN'S TOYS AND CHILD CARE ARTICLES CONTAINING SPECIFIED PHTHALATES

Sec.
1307.1 Scope and application.
1307.2 Definitions.
1307.3 Prohibition on children's toys and child care articles containing specified phthalates.

**Authority:** The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, Sec. 108, 122 Stat. 3016 (August 14, 2008); Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

### § 1307.1 Scope and application.

This part prohibits the manufacture for sale, offer for sale, distribution in commerce or importation into the United States of any children's toy or child care article containing any of the phthalates specified in § 1307.3.

### § 1307.2 Definitions.

The definitions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2052)(a)) and the Consumer Product Safety Improvement Act of 2008 (CPSIA) (Pub. L. 110–314, 108)(g)) apply to this part. Specifically, as defined in the CPSIA:

(a) *Children's toy* means a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays.

(b) *Child care article* means a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething.

### § 1307.3 Prohibition of children's toys and child care articles containing specified phthalates.

(a) As provided in section 108(a) of the CPSIA, the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any children's toy or child care article that contains concentrations of more than 0.1 percent of di-(2-ethyhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP) is prohibited.

(b) In accordance with section 108(b)(3) of the CPSIA, the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any children's toy or child care article that contains concentrations of more than 0.1 percent of diisononyl phthalate (DINP), diisobutyl phthalate (DIBP), di-*n*-pentyl phthalate (DPENP), di-*n*-hexyl phthalate (DHEXP), or dicyclohexyl phthalate (DCHP) is prohibited.

Dated: December 17, 2014.

**Alberta E. Mills,**

*Acting Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. 2014–29967 Filed 12–29–14; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 230 and 240

**[Release No. 33–9693; 34–73876; File No. S7–12–14]**

**RIN 3235–AL40**

## Changes to Exchange Act Registration Requirements To Implement Title V and Title VI of the Jobs Act

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing amendments to our rules to implement Title V and Title VI of the Jumpstart Our Business Startups Act (the ''JOBS Act''). The proposed amendments would

revise rules adopted under Section 12(g) of the Securities Exchange Act of 1934 (the ''Exchange Act'') to reflect the new, higher thresholds for registration, termination of registration and suspension of reporting that were set forth in the JOBS Act. The proposed rules also would apply the thresholds specified for banks and bank holding companies to savings and loan holding companies. In addition, the proposed amendments would revise the definition of ''held of record'' in Exchange Act Rule 12g5–1, in accordance with the JOBS Act, to exclude certain securities held by persons who received them pursuant to employee compensation plans and establish a non-exclusive safe harbor for determining whether securities are ''held of record'' for purposes of registration under Exchange Act Section 12(g).

**DATES:** Comments should be received on or before March 2, 2015.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–12–14 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

*Paper Comments*

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–12–14. This file number should be included on the subject line if email is used. To help us 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/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Steven G. Hearne, Senior Special Counsel, at (202) 551–3430, or Anne Krauskopf, Senior Special Counsel, at (202) 551–3500, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** We are proposing amendments to Rules 3b–4,[1] 12g–1,[2] 12g–2,[3] 12g–3,[4] 12g–4,[5] 12g5–1,[6] and 12h–3[7] under the Exchange Act[8] and an amendment to Rule 405[9] under the Securities Act of 1933 (the ''Securities Act'').[10]

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## I. Introduction

Prior to the enactment of the JOBS Act,[11] Section 12(g) of the Exchange Act[12] required an issuer to register a class of its equity securities if, at the end of the issuer's fiscal year, the securities were ''held of record'' by 500 or more persons and the issuer had total assets exceeding $1 million.[13] Under Section 12(g) and the Commission's rules prior to the JOBS Act amendments, an issuer that had a class of equity securities registered under Section 12(g) was able to terminate that registration if the number of record holders of that class fell below 300, or the number of record holders of that class fell below 500 and the issuer's assets were no more than $10 million at the end of each of its last three fiscal years.[14]

Exchange Act Section 15(d)[15] requires an issuer with an effective registration statement under the Securities Act to file the same reports as an issuer with a registered class of securities under Exchange Act Section 12. Prior to the enactment of the JOBS Act, an issuer's reporting obligation was automatically suspended under Section 15(d)(1) if, on the first day of any fiscal year other than the year in which the registration statement became effective, there were fewer than 300 holders of record of the class of securities offered under the registration statement.

The JOBS Act amended Sections 12(g) and 15(d) of the Exchange Act to adjust the thresholds for registration, termination of registration and suspension of reporting.[16] Specifically,

[1] 17 CFR 240.3b–4.

[2] 17 CFR 240.12g–1.

[3] 17 CFR 240.12g–2.

[4] 17 CFR 240.12g–3.

[5] 17 CFR 240.12g–4.

[6] 17 CFR 240.12g5–1.

[7] 17 CFR 240.12h–3.

[8] 15 U.S.C. 78a *et seq.*

[9] 17 CFR 230.405.

[10] 15 U.S.C. 77a *et seq.*

[11] Public Law 112–106, 126 Stat. 325 (Apr. 5, 2012).

[12] 15 U.S.C. 78*l*(g). Congress enacted Section 12(g) in 1964 following the release of a study of the securities markets conducted by the staff of the Commission in the early 1960s, which was commissioned by Congress to serve as a basis for legislation. *Report of Special Study of Securities Markets of the Securities and Exchange Commission*, H.R. Doc. No. 88–95 (1963). Section 12(g) was enacted to ''improve investor protection by extending to the larger companies in the over-the-counter market the registration, reporting, proxy solicitation, and insider trading requirements . . . applicable to companies listed on an exchange.'' *Report of the Committee on Banking and Currency to Accompany*, S.1642, S. Rep. No. 88–379 (1963) at 1.

[13] *See* 15 U.S.C. 78*l*(g)(1). The Commission has the authority, under Section 12(h), to raise the asset threshold for Section 12(g) registration. 15 U.S.C. 78l(h). The Commission raised the asset threshold for Section 12(g) registration from $1 million to $3 million in 1982, $5 million in 1986 and $10 million in 1996. *See System of Classification for Purposes of Exempting Smaller Issuers From Certain Reporting and Other Requirements*, Release No. 34–18647 (Apr. 15, 1982) [47 FR 17046 (Apr. 21, 1982)], *Reporting by Small Issuers*, Release No. 34–23406 (Jul. 8, 1986) [51 FR 25360 (Jul. 14, 1986)], and *Relief From Reporting by Small Issuers*, Release No. 34–37157 (May 1, 1996) [61 FR 21353 (May 9, 1996)]. For the thresholds applicable to foreign private issuers, *see infra* note 84 and the discussion in the following text.

[14] *See* 15 U.S.C. 78*l*(g)(4) and 17 CFR 240.12g–4(a).

[15] 15 U.S.C. 78*o*(d).

[16] The changes to Exchange Act Sections 12(g)(1), 12(g)(4) and 15(d)(1) were effective upon enactment

Section 501 of the JOBS Act [17] amended Section 12(g)(1) of the Exchange Act to require an issuer to register a class of equity securities (other than exempted securities) within 120 days after its fiscal year end if, on the last day of its fiscal year, the issuer has total assets of more than $10 million and the class of equity securities is ''held of record'' by either (i) 2,000 persons, or (ii) 500 persons who are not accredited investors. Section 601 of the JOBS Act [18] further amended Exchange Act Section 12(g)(1) to require an issuer that is a bank or a bank holding company, as defined in Section 2 of the Bank Holding Company Act of 1956,[19] to register a class of equity securities (other than exempted securities) within 120 days after the last day of its first fiscal year ended after the effective date of the JOBS Act if, on the last day of its fiscal year, the issuer has total assets of more than $10 million and the class of equity securities is ''held of record'' by 2,000 or more persons. Section 601 of the JOBS Act also amended Exchange Act Section 12(g)(4) and Exchange Act Section 15(d)(1) [20] to enable an issuer that is a bank or a bank holding company to terminate the registration of a class of securities under Section 12(g) or suspend reporting under Section 15(d)(1) if that class is held of record by less than 1,200 persons. For other issuers, the threshold in Section 12(g)(4) for termination of registration and in Section 15(d)(1) for suspension of reporting remains at 300.

Section 502 of the JOBS Act [21] amended Exchange Act Section 12(g)(5) [22] to exclude from the definition of ''held of record,'' for the purposes of determining whether an issuer is required to register a class of equity securities, securities that are held by persons who received them pursuant to an ''employee compensation plan'' in transactions exempted from the registration requirements of Section 5 of the Securities Act.[23] Section 503 of the JOBS Act [24] instructed the Commission to revise the definition of ''held of record'' pursuant to Exchange Act Section 12(g)(5) to implement the amendment made by Section 502 of the JOBS Act, and to create a safe harbor for issuers when determining whether holders received their securities pursuant to an ''employee compensation plan'' in a transaction exempted from the registration requirements of Section 5 of the Securities Act.

We believe that the increased registration threshold established by the JOBS Act is intended to permit issuers to defer Exchange Act registration until issuers have a larger shareholder base. In connection with the amendments made by Title V and Title VI of the JOBS Act, we are proposing to amend our rules to reflect the new, higher registration, termination of registration and suspension of reporting thresholds under revised Exchange Act Sections 12(g)(1), 12(g)(4) and 15(d)(1). We also are proposing to permit savings and loan holding companies to register, terminate registration and suspend reporting using the same thresholds that apply to banks and bank holding companies. Finally, we are proposing to amend Exchange Act Rule 12g5–1 to reflect the amendment to Exchange Act Section 12(g)(5) and establish a non-exclusive safe harbor that issuers may follow when determining if securities held by persons who received them pursuant to an employee compensation plan in transactions exempted from the registration requirements of Section 5 of the Securities Act may be excluded when calculating the number of the issuer's holders of record when determining whether they are required to register under Exchange Act Section 12(g)(1).

After enactment of the JOBS Act, we sought comment from the public prior to the issuance of a proposing release. We have considered the pre-proposal comment letters received to date on Title V and Title VI of the JOBS Act, and we are requesting comment on various issues relating specifically to the proposed amendments.[25] In this release, we are proposing rule amendments to implement and address issues specifically related to Title V and Title VI of the JOBS Act. We recognize that commenters have urged us to consider and propose additional amendments. For example, several commenters have recommended that the Commission make rule revisions related to the use of the term ''accredited investor'' or permitting other issuers to register, terminate registration and suspend reporting using the same thresholds that apply to banks and bank holding companies.[26] We have considered the suggestions made by these commenters, but at this time we are not proposing amendments that extend substantially beyond reflecting the new statutory requirements.

## II. Proposed Amendments Relating to Exchange Act Reporting Thresholds

### *A. Application of the Increased Thresholds for Registration and Reporting Obligations*

As a result of the JOBS Act changes to Exchange Act Sections 12(g)(1), 12(g)(4) and 15(d), we are proposing changes to Exchange Act Rules 12g–1, 12g–2, 12g–3, 12g–4 and 12h–3, which are the rules that govern the mechanics relating to registration, termination of registration under Section 12(g) and suspension of reporting obligations under Section 15(d). These rules currently reflect the prior holder of record statutory thresholds in Sections 12(g) and 15(d). We are proposing to amend these rules to reflect the new thresholds set forth in the JOBS Act.

Exchange Act Rule 12g–1 currently provides that an issuer shall be exempt from the registration requirements if, on the last day of its most recent fiscal year, it had total assets not exceeding $10 million. JOBS Act Section 501 amended Section 12(g)(1) to expressly include the $10 million asset threshold. We are proposing to revise Rule 12g–1 to reflect the asset and holder of record thresholds established by Titles V and VI of the JOBS Act relating to the requirement to register a class of equity securities under the Exchange Act. The revision would additionally remove an outdated reference currently contained in the rule.[27]

of the JOBS Act and do not require any Commission action. We are proposing amendments to our rules to reflect the new, higher thresholds provided by the JOBS Act in our rules and to implement the required safe harbor for securities received pursuant to employee compensation plans.

[17] Public Law 112–106, Sec. 501, 126 Stat. 326 (Apr. 5, 2012).

[18] Public Law 112–106, Sec. 601, 126 Stat. 326 (Apr. 5, 2012).

[19] 12 U.S.C. 1841.

[20] 15 U.S.C. 78*o*(d)(1).

[21] Public Law 112–106, Sec. 502, 126 Stat. 326 (Apr. 5, 2012).

[22] 15 U.S.C. 78*l*(g)(5).

[23] 15 U.S.C. 77e.

[24] Public Law 112–106, Sec. 503, 126 Stat. 326 (Apr. 5, 2012).

[25] To facilitate public input on JOBS Act rulemaking before the issuance of rule proposals, the Commission invited members of the public to make their views known on various JOBS Act initiatives in advance of any rulemaking by submitting comment letters to the Commission's Web site at *http://www.sec.gov/spotlight/jobsactcomments.shtml*. Comment letters received to date on Title V of the JOBS Act are available at *http://www.sec.gov/comments/jobs-title-v/jobs-title-v.shtml* and on Title VI of the JOBS Act at *http://www.sec.gov/comments/jobs-title-vi/jobs-title-vi.shtml*.

[26] *See* Section II.C. relating to the term ''accredited investor.'' *See also* letters from Wilmer Hale (June 25, 2012), and Ledgewood, P.C. (Sept. 12, 2012) on behalf of their respective clients, a real estate investment trust and a real estate limited partnership, requesting that the Commission use its exemptive authority to revise the holder of record threshold to treat non-bank issuers similarly to banks and bank holding companies.

[27] Under Exchange Act Rule 12g–1, foreign private issuers may not rely on the exemption from registration provided in that rule if their securities are quoted on an automated inter-dealer quotation system. The NASDAQ Stock Market was the only

Continued

As noted above, Section 601 of the JOBS Act amended Exchange Act Section 12(g)(4) to raise the threshold at which an issuer that is a bank or a bank holding company may terminate registration of a class of equity securities from 300 to 1,200 holders of record. Section 601 similarly amended Exchange Act Section 15(d)(1) by providing for an automatic suspension of the duty to file reports for a bank or bank holding company with respect to a class of equity security that is held of record by less than 1,200 persons at the beginning of its fiscal year, provided that the bank or bank holding company did not have a Securities Act registration statement that became effective during that year.

As currently in effect, Exchange Act Rules 12g–2 and 12g–3 reflect the holders of record thresholds in the Exchange Act for terminating registration and suspending reporting that existed prior to the JOBS Act amendments and not the new thresholds for banks and bank holding companies. Specifically,

- Rule 12g–2 addresses securities deemed to be registered pursuant to Section 12(g)(1) upon termination of the exemption pursuant to Section 12(g)(2)(A) or (B) [28] and establishes a 300-person threshold for such a class of securities to be registered under Section 12(g).
- Rule 12g–3 addresses the 300-person threshold for the registration of securities of successor issuers under Section 12(b) or Section 12(g).

In addition, although the statutory provisions of Exchange Act Section 12(g) and 15(d) do not suspend reporting obligations immediately when an issuer reaches the designated threshold, Exchange Act Rules 12g–4 and 12h–3 permit issuers to immediately suspend their duty to file periodic and current reports. These rules, however, reflect the thresholds in Sections 12(g) and 15(d) prior to the JOBS Act amendments and not the new threshold for banks and bank holding companies. Specifically,

- Rule 12g–4(a) provides that termination of registration under Section 12(g) shall take effect in 90 days, or such shorter period as the Commission determines, after the issuer certifies on Form 15 [29] that the class of securities is held by less than 300 persons, or 500 persons where the total assets of the issuer have not exceeded $10 million on the last day of each of the preceding three years.
- Rule 12g–4(b) provides that the duty to file current and periodic reports under Exchange Act Section 13(a) [30] for that class of securities is suspended immediately upon the filing of a certification on Form 15 provided that the issuer has less than 300 holders of record, or 500 holders of record where the issuer's total assets have not exceeded $10 million on the last day of each of the preceding three years.
- Rule 12h–3 provides that the duty to file current and periodic reports under Section 13(a) pursuant to Section 15(d) for that class of securities is suspended immediately upon the filing of a certification on Form 15, provided that:
  - ○ The issuer has less than 300 holders of record or 500 holders of record where the issuer's total assets have not exceeded $10 million on the last day of each of the preceding three years;
  - ○ the issuer has filed its Section 13(a) reports for the most recent three completed fiscal years, and for the portion of the year immediately preceding the date of filing the Form 15 or the period since the issuer became subject to the reporting obligation; and
  - ○ a registration statement has not become effective or was required to be updated pursuant to Exchange Act Section 10(a)(3) [31] during the fiscal year.[32]

Because the new statutory threshold for banks and bank holding companies is not reflected in Rule 12g–4, banks and bank holding companies seeking to rely on the new 1,200-holder threshold may not rely on the existing procedural accommodations in the rule. As a result, the statute requires them to wait 90 days after filing a certification with the Commission that the number of holders of record is less than 1,200 persons to terminate their Section 12(g) registration and cease filing reports required by Section 13(a) rather than being able to suspend their Section 13(a) reporting obligations immediately upon the filing of a Form 15 in reliance on the rule. Similarly, banks and bank holding companies are not permitted to rely on Rule 12h–3 to immediately suspend their Section 15(d) reporting obligations using the new higher statutory threshold during a fiscal year. Rather, Section 15(d)(1) provides that they may use the higher thresholds only when seeking to suspend a Section 15(d) obligation on the first day of a fiscal year. Similarly the new statutory threshold also is not reflected in current Rules 12g–2 and 12g–3, leaving all issuers to refer to the lower 300-holder threshold under these rules.

We are proposing to amend these rules to include the JOBS Act thresholds for banks and bank holding companies.[33] The proposed changes would allow banks and bank holding companies to rely on the Commission's rules to suspend reporting immediately, to avoid being deemed registered upon the termination of certain exemptions or as a successor issuer, and to terminate their registration during the fiscal year, at the higher 1,200-holder threshold.

*B. Increased Thresholds for Savings and Loan Holding Companies' Registration and Reporting Obligations*

We are proposing to apply the same thresholds to savings and loan holding companies that apply to banks and bank holding companies. As noted above, banks and bank holding companies under Title VI of the JOBS Act are subject to a higher shareholder registration threshold for a class of equity security under Section 12(g)(1) of the Exchange Act, and a higher threshold for termination of registration under Section 12(g)(4) and for suspension of the duty to file reports under Section 15(d)(1). Section 3(a)(6) of the Exchange Act defines the term ''bank''; [34] however, neither the Exchange Act nor the Commission's rules define ''bank holding company.''

automated inter-dealer quotation system in existence when this provision was adopted and has subsequently registered as a securities exchange with the Commission. *See In the Matter of the Application of the Nasdaq Stock Market LLC for Registration as a National Securities Exchange; Findings, Opinion and Order of the Commission,* Release No. 34–53128 (Jan. 13, 2006) [71 FR 3550 (Jan. 23, 2006)]. As a result, the reference to an automated inter-dealer quotation system is no longer necessary and we are proposing to remove it.

[28] Section 12(g)(2)(A) [15 U.S.C. 78*l*(g)(2)(A)] provides an exemption from Section 12(g) registration while the class of securities is listed and registered on a national securities exchange under Exchange Act Section 12(b) [15 U.S.C. 78*l*(b)]. Section 12(g)(2)(B) [15 U.S.C. 78*l*(g)(2)(B)] provides an exemption for securities issued by registered investment companies.

[29] 17 CFR 249.323.

[30] 15 U.S.C. 78m(a).

[31] 15 U.S.C. 78j(a)(3).

[32] The automatic statutory suspension of an issuer's Section 15(d) reporting obligation also is not available as to any fiscal year in which the issuer's Securities Act registration statement becomes effective or is required to be updated pursuant to Section 10(a)(3) of the Securities Act.

[33] One commenter expressed support for a change permitting banks and bank holding companies to immediately suspend Section 13(a) reporting at the 1,200-holder threshold upon filing Form 15, as is permitted for all issuers under current rules at the 300-holder threshold. *See* letter from John Marshall Bank (Apr. 13, 2012).

[34] 15 U.S.C. 78c(a)(6). Exchange Act Section 3(a)(6) defines a ''bank'' to include Federal savings associations and any other banking institution or savings association, as defined in the Home Owners' Loan Act. We read this definition to include savings and loan associations and other similar entities.

Section 2 of the Bank Holding Company Act of 1956 specifically excludes ''savings and loan holding companies'' from the definition of bank holding company.[35] Thus, while banks, savings associations and bank holding companies are covered by Title VI of the JOBS Act, savings and loan holding companies are not.

A commenter representing community banks asserted that savings and loan holding companies should be covered by Title VI of the JOBS Act.[36] Other commenters from the banking industry and Congress have also requested that savings and loan holding companies be treated similarly to bank holding companies for purposes of the registration, termination of registration and suspension of reporting provisions of the Exchange Act.[37] One commenter acknowledged that the JOBS Act did not ''expressly extend its new threshold for termination of registration to savings and loan holding companies,'' but suggested that correction of that omission would be ''entirely consistent with the intent and purpose of the JOBS Act.'' [38]

Based on a review of reporting issuers, we estimate that approximately 125 savings and loan holding companies were reporting issuers as of June 30, 2014, most of which are registered pursuant to Section 12(b).[39] Approximately 90 of these companies reported fewer than 1,200 holders of record and would be eligible to terminate registration under the proposed threshold.[40] These savings and loan holding companies, however, are subject to regulation by the Board of Governors and are generally required to submit the same reports to banking regulators as other banking entities regulated by the Board of Governors, including banks and bank holding companies covered by Title VI of the JOBS Act.[41]

As noted above, the increased thresholds provided by the JOBS Act for registration, termination of registration and suspension of reporting for banks and bank holding companies do not apply to savings and loan holding companies. This creates inconsistent treatment among depository institutions, resulting in different registration requirements for savings and loan holding companies that otherwise provide services similar to those provided by banks and bank holding companies and are generally subject to similar bank regulatory and supervision requirements. We have received comments in support of treating savings and loan holding companies the same as banks and bank holding companies with regard to the increased thresholds.

We are proposing to revise our rules so that savings and loan holding companies are treated in a similar manner to banks and bank holding companies for the purposes of registration, termination of registration or suspension of their Exchange Act reporting obligations. Unlike for bank holding companies, which are able to rely on the JOBS Act statutory changes, the revised rules would be the sole basis on which savings and loan holding companies could rely when making those determinations. We are proposing to apply the new higher thresholds applicable to banks and bank holding companies to savings and loan holding companies [42] because we believe the regulatory oversight applicable to savings and loan holding companies is substantially similar to the regulatory oversight for bank holding companies. We believe these companies should be treated consistently with other depository institutions under our rules. We are therefore proposing to amend Exchange Act Rule 12g–1 to establish an exemption for savings and loan holding companies from the registration requirement that mirrors the exemption for banks and bank holding companies established by the JOBS Act. In addition, we are proposing to revise Exchange Act Rules 12g–2, 12g–3, 12g–4 and 12h–3 to permit savings and loan holding companies to immediately suspend current and periodic reporting upon filing Form 15 at the 1,200-holder threshold in the same manner as banks and bank holding companies.

### *C. Application of the Increased Threshold for Accredited Investors*

Section 501 of the JOBS Act amended Exchange Act Section 12(g)(1) to increase the threshold that triggers registration by an issuer other than a bank or bank holding company to total assets exceeding $10 million and a class of equity security (other than an exempted security) held of record by either 2,000 persons or 500 persons who are not accredited investors (as such term is defined by the Commission).[43] A number of commenters pointed to potential compliance concerns with respect to identifying accredited investors and recommended ways to facilitate issuers' use of the increased threshold for holders of record that are accredited investors. Some commenters recommended that the Commission confirm that the term ''accredited

[35] A savings and loan holding company is a company that controls savings associations or other savings and loan holding companies, similar to the way a bank holding company is a company that controls banks or other bank holding companies. Savings associations and banks are all depository institutions, and each one is regulated by the appropriate Federal banking agency. 12 U.S.C. 1813(q). The definition of ''appropriate Federal banking agency'' provides which federal banking agency is the primary regulator for the various types of national, state and foreign banks and savings associations.

[36] *See* letter from Independent Community Bankers of America (Apr. 16, 2012).

[37] *See, e.g.,* letters from American Bankers Association (Aug. 10, 2012); Community Bankers Association of Illinois (May 7, 2012); U.S. Representatives Himes and Womack (Nov. 29, 2012); Wayne Savings Community Bank (Apr. 12, 2012); U.S. Representative Stivers (May 4, 2012); and U.S. Representative Gibbs (Dec. 19, 2012).

[38] *See* letter from American Bankers Association.

[39] Savings and loan holding companies were identified by examining filings in the relevant Standard Industrial Classification codes.

[40] The Board of Governors of the Federal Reserve System (the ''Board of Governors'') previously determined to exempt commercial savings and loan holding companies from its initial requirement that savings and loan holding companies generally submit the same reports as other banking entities regulated by the Board of Governors. *See Agency Information Collection Activities Regarding Savings and Loan Holding Companies: Announcement of Board Approval Under Delegated Authority and Submission to OMB,* (Dec. 23, 2011) [76 FR 81933 (Dec. 29, 2011)]. There are six commercial savings and loan holding companies that are all exchange-listed issuers obligated to file, and would continue to be obligated to file, Exchange Act reports pursuant to Exchange Act Section 12(b) (15 U.S.C. 78*l*(b)). For ease of application and due to the limited effect on, and small number of, such issuers, we are not proposing to differentiate between commercial saving and loan holding companies and other savings and loan holding companies for purposes of this rulemaking.

[41] *See id.* Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376) (the ''Dodd-Frank Act'') abolished the Office of Thrift Supervision, the regulator that formerly supervised savings and loan holding companies, and transferred its authorities (including rulemaking) related to savings and loan holding companies to the Board of Governors. The Board of Governors assumed supervisory responsibility for savings and loan holding companies and their non-depository subsidiaries beginning on July 21, 2011. The Board of Governors is responsible for the consolidated supervision of bank holding companies and savings and loan holding companies and requires those entities to provide data relating to capitalization, liquidity, and risk management as well as periodic financial reports in order for the Board of Governors to analyze the overall financial condition of those entities to ensure safe and sound operations. These reports include, among others, quarterly Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) and an Annual Report of Bank Holding Companies (FR Y–6).

[42] Under our proposal ''savings and loan holding company'' would be defined pursuant to Section 10 of the Home Owners' Loan Act. 12 U.S.C. 1461.

[43] The statutory amendment was effective upon enactment of the JOBS Act and does not require any Commission action. While this change primarily affects issuers that have never had a reporting obligation under the Exchange Act, issuers that have filed a Securities Act registration statement that became effective but have not triggered an Exchange Act Section 12(g) registration requirement and issuers that have terminated registration or suspended their reporting obligation will need to monitor the accredited investor status of their investors as of the last day of each fiscal year.

investor'' as used in this provision of the JOBS Act has the same meaning as set forth in Securities Act Rule 501(a)[44] of Regulation D.[45] One commenter further recommended that the Commission permit an issuer to rely on an annual affirmation from investors that their accredited investor status has not changed.[46] Other commenters recommended that the Commission provide guidance or a safe harbor to allow issuers to rely on an ongoing basis on information previously obtained about a shareholder's accredited investor status.[47] Commenters also recommended that the Commission provide additional flexibility by, for example, permitting issuers to rely on the determinations made by certain third parties, such as financial intermediaries, or permitting determinations during a reasonable period before or after the fiscal year end.[48]

To rely on the new, higher threshold established by the JOBS Act, an issuer will need to be able to determine which of its record holders are accredited investors. We are not proposing to establish a new definition of ''accredited investor'' for the purposes of Section 12(g)(1). Securities Act Rule 501(a) contains a definition of ''accredited investor'' that includes any person who comes within, or who the issuer reasonably believes comes within, any of eight enumerated categories.[49] Section 413(b) of the Dodd-Frank Act specifically requires the Commission to undertake a review of the ''accredited investor'' definition in its entirety, as it relates to natural persons, every four years and no earlier than July 10, 2014.[50]

We are proposing that the definition of ''accredited investor'' in Securities Act Rule 501(a) apply in making determinations under Exchange Act Section 12(g)(1).[51] The ''accredited investor'' determination would be made as of the last day of the fiscal year rather than at the time of the sale of the securities.[52] Issuers conducting offerings in reliance on an exemption from Securities Act registration in which purchasers must be accredited investors typically take appropriate steps to establish a reasonable belief that a prospective investor is an accredited investor. This reasonable belief is based on an issuer's due diligence and depends on the particular facts and circumstances surrounding the determination. We believe applying the familiar concepts of the accredited investor definition in Rule 501(a) to the registration threshold in Section 12(g)(1) would facilitate compliance for issuers.

After an issuer completes its offering and has sold securities to purchasers who have been determined to be accredited investors, it is not required to periodically assess an investor's continued status as an accredited investor. We recognize that issuers may have difficulty determining whether existing security holders are accredited investors for purposes of the threshold in Section 12(g)(1) and that providing a safe harbor or other guidance could help to mitigate costs for issuers seeking to determine accredited investor status. Some commenters have suggested that we permit issuers to rely on information previously provided by these security holders in connection with the purchase or transfer of securities for an indefinite period into the future.[53] We believe such reliance could, however, result in the use of outdated information that may no longer be reliable. Instead, an issuer will need to determine, based on facts and circumstances, whether it can rely upon prior information to form a reasonable basis for believing that the security holder continues to be an accredited investor as of the last day of the fiscal year.

Without new guidance from the Commission, when making the determination at fiscal year-end of whether a security holder is an accredited investor for purposes of Exchange Act Section 12(g)(1), issuers would likely use procedures similar to those used when relying on Rule 506.[54] We recognize that the accredited investor determination under the Securities Act is made in the context of an investor making an investment decision, while in the Exchange Act context it is made when an issuer is considering whether it must register a class of securities with the Commission. In light of this, we are considering whether a different approach would be appropriate for determining accredited

[44] 17 CFR 230.501(a).

[45] *See* letters from New York City Bar Association (June 6, 2012) (''NYCBA'') and the Business Law Section of the American Bar Association (June 26, 2013) (''ABA''). The ABA letter further requested that the Commission provide guidance on the type of information upon which issuers may rely and specifically recommended that the Commission not require issuers to take reasonable steps to verify accredited investor status.

[46] *See* letter from ABA.

[47] *See* letters from Foley & Lardner (May 24, 2012) and NYCBA. Foley & Lardner recommended allowing reliance on information obtained at the time the issuer's securities were initially issued, or, in the alternative, when the securities were most recently issued, when making the determination of whether the holders are accredited for purposes of counting holders under Section 12(g). NYCBA recommended that the Commission expressly permit an issuer ''to rely on any determination of 'accredited investor' status made in connection with the issuer's most recent sale of securities to the relevant investor, or the most recent transfer to the investor in connection with which the issuer actually determined that the investor was 'accredited.' '' Other commenters also supported permitting issuers to rely on information previously provided if an investor fails to provide the issuer with updated information. *See* letters from ABA and Keith Paul Bishop (June 13, 2012).

[48] *See* letter from ABA. ABA suggested that the rule should provide some flexibility on the timing of the determination. This would permit issuers to rely on information available to them at the time they made a judgment regarding accredited investor status, rather than requiring issuers to update the information as of the end of the fiscal year. *See also* letter from NYCBA recommending that the Commission adopt rules open to the possibility that limited access trading venues may be able to treat all participants as accredited investors. One commenter recommended that the Commission require issuers to determine accredited investor status as of the last day of each fiscal year. *See* letter from Keith Paul Bishop.

[49] Under Securities Act Rule 501(a) the categories of accredited investor include: A bank, insurance company, registered investment company, business development company, or small business investment company; an employee benefit plan (within the meaning of the Employee Retirement Income Security Act) if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of $5 million; a tax exempt charitable organization, corporation or partnership with assets in excess of $5 million; a director, executive officer, or general partner of the company selling the securities; an enterprise in which all the equity owners are accredited investors; an individual with a net worth of at least $1 million, not including the value of his or her primary residence; an individual with income exceeding $200,000 in each of the two most recent calendar years or joint income with a spouse exceeding $300,000 for those years and a reasonable expectation of the same income level in the current year; and a trust with assets of at least $5 million, not formed only to acquire the securities offered, and whose purchases are directed by a person who meets the legal standard of having sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the prospective investment.

[50] We have already requested comment on this definition. *See Amendments to Regulation D, Form D and Rule 156,* Release No. 33–9416 (Jul. 10, 2013) [78 FR 44806 (Jul. 24, 2013)].

[51] Although the term ''accredited investor'' is also defined in Securities Act Rule 215 [17 CFR 230.215] for the purpose of the statutory exemption from registration under Section 4(a)(5) [15 U.S.C. 78d(a)(5)], the definition of ''accredited investor'' contained in Securities Act Rule 501(a) of Regulation D is the more commonly understood meaning of the term, given the prevalence of the use of Regulation D for exempt offerings.

[52] Securities Act Rule 501(a) otherwise defines ''accredited investor'' as being determined at the time of the sale of the securities.

[53] *See supra* note 47.

[54] The procedures used in a Rule 506 offering may vary depending on a number of factors, including the nature of the purchaser and whether the offering is pursuant to Rule 506(b) or Rule 506(c). Rule 506(c) requires an issuer to take reasonable steps to verify that purchasers of securities sold in such offering are accredited investors. As we previously recognized when we adopted Rule 506(c), ''issuers may have to apply a stricter and more costly process to determine accredited investor status than what they currently use.'' *See Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings,* Release No. 33–9415 (Jul. 10, 2013) [78 FR 44771 (Jul. 24, 2013)].

investor status under Section 12(g) and solicit comment on the appropriate structure and criteria for such an approach below.

Request for Comment

1. We are proposing to revise Rule 12g–1 to reflect changes made by Titles V and VI of the JOBS Act. Should we include the requirements of Section 12(g)(1) in our rules as proposed? Should we delete the provision in the current Rule 12g–1 that precludes foreign private issuers from relying on the exemption from registration if their securities are quoted on an automated inter-dealer quotation system, as proposed?

2. The higher registration and reporting thresholds could result in issuers having a significant number of shareholders with freely tradable shares who lack current disclosure information about the issuer. How would investors get the information they need in connection with purchases and sales? What investor protection issues are raised when these security holders engage in secondary market transactions and how might they be addressed?

3. Should we extend the new registration, termination of registration and suspension of reporting thresholds for banks and bank holding companies to savings and loan holding companies, as proposed? We are proposing to use the definition of ''savings and loan holding company'' as defined in Section 10 of the Home Owners' Loan Act. Does the proposed definition cover the appropriate entities? If not, what definition should be used?

4. We are proposing to permit savings and loan holding companies to use the higher thresholds equivalent to those available to banks and bank holding companies. Are there facts and circumstances, other than those discussed above, that we should consider in evaluating whether to provide those higher thresholds? How would using different thresholds for savings and loan holding companies impact market participants and investors? What effect would different thresholds have on competition between savings and loan holding companies and other depository institutions, such as banks and bank holding companies?

5. The population of savings and loan holding companies includes commercial savings and loan holding companies that the Board of Governors exempted from its initial requirement that savings and loan holding companies generally submit the same reports as other banking entities regulated by the Board of Governors.[55] These commercial savings and loan holding companies are all exchange-listed issuers that are currently registered and required to file reports under Section 12(b) of the Exchange Act. Should these companies be permitted to rely on the higher thresholds applicable to banks and bank holding companies? Should we instead carve out such savings and loan holding companies or provide other limitations for these companies?

6. Some commenters have recommended that we provide a safe harbor or other guidance to provide issuers with more certainty on how to establish a reasonable belief that a security holder is an accredited investor and therefore qualifies under the definition. Are there circumstances in the determination required to be made under Section 12(g) that suggest the need for a safe harbor or guidance, and if so, is one preferable over the other? What should be the parameters of any safe harbor or guidance? Should a safe harbor or other guidance specify the methods of inquiry an issuer could make or the documents it should obtain that would establish a reasonable belief? What methods or standards should we adopt and what steps should we require in making the determination? What negative effects on investors, if any, could result from providing a safe harbor or other guidance? Absent a safe harbor or other guidance, what burdens would the issuer face in establishing reasonable belief that a security holder is an accredited investor and in making the determination as to whether it has exceeded the Section 12(g) thresholds for Exchange Act reporting? Please quantify, if possible, the expected costs of establishing a reasonable belief every year for each accredited investor and compare the expected costs to the estimated costs of registration.

7. If the rules were to include a safe harbor or other guidance, should we permit an issuer to form its reasonable belief that a person is an accredited investor based on determinations made by specified third parties? For example, in Securities Act Rule 506(c)(2)(ii)(C) we allow issuers to rely on a written confirmation by a registered broker-dealer, a registered investment adviser, a licensed attorney, or a certified public accountant to satisfy the requirement that the issuer take reasonable steps to verify the accredited investor status of a purchaser. Should a similar written confirmation be sufficient here? Should we permit written confirmations from other third parties not subject to regulatory oversight? Why or why not? If we permit written confirmations from third parties that are not subject to regulatory oversight such as those found in Rule 506(c)(2)(ii)(C), should we require issuers to perform some level of due diligence on the accredited investor determinations made by those third parties or on the third parties making those determinations? Would the answer depend on the nature of the third party? Alternatively, should we permit an issuer to rely on a written certification by the investor, on other specified information obtained by the issuer, or on a combination of a certification and other information? What information, other than a written investor certification, would it be appropriate to require? Would the answer depend on whether an issuer had determined at the time of the initial investment that the investor was an accredited investor? For what period of time should that determination be considered reliable? Should the safe harbor or other guidance specify that determinations made a specified period before or after the fiscal year end would be deemed to be reasonable? If so, what would be a reasonable time period for making such determination? What documentation, if any, should be retained by the issuer?

8. For purposes of any safe harbor or other guidance, should we permit an issuer to rely on previously obtained information relating to the person's accredited investor status, such as information obtained at the time the issuer's securities were initially, or most recently, sold to that person? Should such a provision be limited to situations in which the issuer does not have information that would lead it to believe that the previously obtained information was incorrect, unreliable or had changed? Should we place a time limit on the permitted use of previously obtained information, such as only permitting the use of information received within the preceding six months or year? Should an issuer be able to rely on information previously obtained if the security holder failed to respond to an issuer's request for an annual affirmation of accredited investor status?

## III. Proposed Amendments to Exchange Act Rule 12g5–1

### *A. Statutory Requirement and Definition of ''Employee Compensation Plan''*

Exchange Act Section 12(g)(5), as amended by Section 502 of the JOBS Act, provides that the definition of ''held of record'' shall not include securities held by persons who received them pursuant to an ''employee

[55] *See supra* note 40.

compensation plan'' in transactions exempted from the registration requirements of Section 5 of the Securities Act. By its express terms, this new statutory exclusion applies solely for purposes of determining whether an issuer is required to register a class of equity securities under the Exchange Act and does not apply to a determination of whether such registration may be terminated or suspended.[56] The provision, which is substantially broader than the Commission's current rules exempting compensatory employee stock options from Section 12(g) registration,[57] does not define the term ''employee compensation plan.''

Section 503 of the JOBS Act instructs the Commission to amend the definition of ''held of record'' to implement the amendment in Section 502 and to adopt a safe harbor that issuers can use when determining whether holders of their securities received them pursuant to an employee compensation plan in exempt transactions. We are proposing to amend Exchange Act Rule 12g5–1 to implement the statutory exclusion created by Section 502 of the JOBS Act and to establish a non-exclusive safe harbor for issuers as directed by Section 503.[58]

Subsequent to the adoption of the JOBS Act, a number of commenters provided recommendations to the Commission as to how ''employee compensation plan'' should be defined. Some commenters recommended that the Commission interpret the term broadly to promote the use of employee equity issuances.[59] One commenter indicated that ''linking the scope of Rule 701 and amended Section 12(g)(5) makes sense, in light of the apparent purpose of the latter provisions, and will avoid needless complexity.''[60] Another commenter recommended that the Commission establish a non-exclusive safe harbor without recommending a specific definition for ''employee compensation plan.''[61] This commenter suggested that ''application in a Section 12(g) context of the familiar concepts applied in connection with the exempt issuance of compensatory equity securities under Rule 701 will facilitate compliance by streamlining a smaller issuer's learning curve and simplifying recordkeeping.''[62] In addition, this commenter specifically recommended that the safe harbor ''explicitly import the interpretation of Rule 701(c)'' in order to incorporate ''the full range of compensatory arrangements and security holders described in Rule 701(c) under the Securities Act'' and that it ''should cover equity securities in the hands of the full range of participants and permitted transferees enumerated in Rule 701(c).''[63] This commenter also indicated that ''the requirement of a written arrangement is reasonable in the Section 12(g)(5) context, as well as for Rule 701.''[64] Commenters also made specific recommendations regarding additional securities that should be considered ''securities received pursuant to an employee compensation plan.''[65]

Instead of creating a new definition for the term ''employee compensation plan,'' we are proposing to revise the definition of ''held of record'' and establish a non-exclusive safe harbor that relies on the current definition of ''compensatory benefit plan'' in Rule 701 and the conditions in Rule 701(c).[66] Although some commenters recommended that we create a new, broad definition, we believe that by not defining the term ''employee compensation plan,'' and by providing for a non-exclusive safe harbor, we are providing issuers with flexibility in their determination under Section 12(g)(5). We concur with some commenters who recommended applying the Rule 701 concepts that issuers already employ for exempt issuances, and propose to use those concepts as part of the non-exclusive safe harbor. We further believe that developing a new definition for ''employee compensation plan'' at this time potentially could result in needless complexity and create conflicts with the current definitions of ''compensatory benefit plan'' and ''employee benefit plan,'' which the Commission has sought to harmonize.[67]

By conditioning the new exclusion from ''held of record'' upon the securities being received pursuant to an employee compensation plan in transactions exempted from the registration requirements of Section 5 of the Securities Act, Section 502 of the JOBS Act uses Securities Act concepts to identify persons that an issuer may exclude from its determination of the number of holders of record under Section 12(g)(1) of the Exchange Act. Given this express interaction between Securities Act and Exchange Act concepts in this provision of the JOBS Act, we believe that it would facilitate compliance if the terminology we use in proposed Exchange Act Rule 12g5–1(a)(7) is consistent with the terminology used in our Securities Act rules.

In regulating securities offerings to employees, we use the term ''employee benefit plan,'' as defined in Securities Act Rule 405,[68] for Securities Act Form

[56] The statutory exclusion in Section 12(g)(5) specifically refers to Exchange Act Section 12(g)(1), which relates to when an issuer must register its securities with the Commission.

[57] Exchange Act Rule 12h–1(f) [17 CFR 240.12h–1(f)] provides non-reporting issuers with an exemption from Section 12(g) registration for stock options issued under written compensatory stock option plans under certain conditions. Exchange Act Rule 12h–1(g) [17 CFR 240.12h–1(g)] provides a similar exemption for stock options for reporting issuers that are required to file such periodic reports. The exemptions provide specific eligibility requirements and are limited to options issued pursuant to a written compensatory stock option plan. *See Exemption of Compensatory Stock Options from Registration Under Section 12(g) of the Securities Exchange Act of 1934,* Release No. 34–56887 (Dec. 3, 2007) [72 FR 69554 (Dec. 7, 2007)] (the ''Compensatory Stock Options Release'').

[58] *See* Proposed Rule 12g5–1(a)(7).

[59] *See* letter from Foley & Lardner recommending a broad definition of ''employee compensation plan'' that would include arrangements that are not written. *See also* letter from Keith Paul Bishop recommending a broad definition of ''employee compensation plan.''

[60] *See* letter from NYCBA. For a more detailed explanation of Securities Act Rule 701, *see infra* notes 66 and 72.

[61] *See* letter from ABA. ABA indicated that ''it is important that the concept of 'employee compensation plan' encompass both traditional plans and individual compensatory agreements and include compensatory arrangements established by the various entities related to the issuer enumerated in Rule 701(c).''

[62] *See id.*

[63] *See id.*

[64] *See id.,* indicating that state corporate law generally requires some documentation of authorized issuances of equity securities. This recommendation contrasts with recommendations of other commenters suggesting that the term ''employee compensation plan'' should not be read to require a written arrangement. *See supra* note 59.

[65] *See, e.g.,* letter from David C. Fisher (June 13, 2012), recommending that ''securities acquired in an issuer-sponsored internal market, limited to transactions in securities received pursuant to the issuer's employee compensation plans, will be considered securities received pursuant to an employee compensation plan.'' *See also* letter from NYCBA suggesting that '''closed system' platforms and trading venues'' may be able to afford issuers a reasonable basis to determine that participants are excludable employees.

[66] In 1988, the Commission adopted Securities Act Rule 701 [17 CFR 230.701] to provide an exemption from Securities Act registration for offers and sales of securities made pursuant to compensatory benefit plans by issuers that are not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. *See Compensatory Benefit Plans and Contracts,* Release No. 33–6768 (Apr. 14, 1988) [53 FR 12918 (Apr. 20, 1988)] (the ''Rule 701 Adopting Release'').

[67] See *Rule 701—Exempt Offerings Pursuant to Compensatory Arrangements,* Release No. 33–7645 (Feb. 25, 1999) [64 FR 11095 (Mar. 8, 1999)] (the ''1999 Rule 701 Release''), and *Registration of Securities on Form S–8,* Release No. 33–7646 (Feb. 25, 1999) [64 FR 11103 (Mar. 8, 1999)] (the ''1999 Form S–8 Release'').

[68] Securities Act Rule 405 defines an ''employee benefit plan'' as any written purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan or written compensation contract solely for employees, directors, general partners, trustees (where the

S–8 registration,[69] but use the term ''compensatory benefit plan'' in the Securities Act Rule 701 exemption. A ''compensatory benefit plan'' under Rule 701(c)(2) is broadly defined as ''any purchase, savings, option, bonus, stock appreciation, profit sharing, thrift, incentive, deferred compensation, pension or similar plan.'' [70] When adopting Rule 701, the Commission expressly stated that it patterned the definition of ''compensatory benefit plan'' on the definition used in Securities Act Rule 405.[71] Rule 701 includes a number of conditions consistent with the Rule 405 definition of ''employee benefit plan.'' In particular, Rule 701(c) limits the exemption to offers and sales of securities under a written compensatory benefit plan established by the issuer for the participation of its employees and other specified persons.[72] Many of the conditions applicable to exempt offers and sales made under Rule 701 are also similar to conditions placed on Form S–8 registration of securities to be offered under an ''employee benefit plan'' as defined in Rule 405. For example, Rule 701(c)(3) defines eligible family members consistent with Form S–8.[73] In addition, the Rule 701 exemption includes a number of conditions to its use, including but not limited to conditions that the plan be written and delivered to employees; that the plan be established by the issuer, its parents, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer's parent, for the participation of their employees, directors, general partners, trustees, officers, or consultants and advisors; [74] and that the amount of securities sold be limited.

*B. Definition of ''Held of Record'' and Non-Exclusive Safe Harbor for Determining Holders of Record*

As directed by Section 503 of the JOBS Act, the Commission is proposing to amend the definition of ''held of record'' and to establish a safe harbor in Rule 12g5–1 that issuers can rely on when determining if securities held by persons who received them pursuant to an employee compensation plan in transactions exempted from the registration requirements of Section 5 of the Securities Act may be excluded when calculating the number of holders of record of a class of equity securities for purposes of determining the issuer's registration obligation under Section 12(g)(1)(A).[75] We received comments addressing issues about the scope of the safe harbor. One commenter recommended that the Commission expressly provide that the safe harbor is a non-exclusive safe harbor akin to the Securities Act Rule 506 safe harbor under Securities Act Section 4(a)(2).[76] This commenter also recommended that a safe harbor should provide that in a ''subsequent transaction (including a business combination) that is exempt from, or otherwise is not subject to, the registration requirements of Section 5, the securities issued in that transaction to eligible employees, former employees, and other covered persons in exchange for securities covered by the Section 12(g)(5) compensatory plan securities carve out'' would also be covered.[77] The same commenter further recommended that securities issued in unregistered transactions based on the ''no sale'' theory should be included within the definition of ''transactions exempt from section 5.'' [78]

1. Definition of ''Held of Record''

We are proposing to amend the definition of ''held of record'' to provide that when determining whether an issuer is required to register a class of equity securities with the Commission pursuant to Exchange Act Section 12(g)(1) an issuer may exclude securities that are either:

- Held by persons who received the securities pursuant to an employee compensation plan in transactions exempt from the registration

registrant is a business trust), officers, or consultants or advisors. However, consultants or advisors may participate in an employee benefit plan only if: (1) They are natural persons; (2) They provide bona fide services to the registrant; and (3) The services are not in connection with the offer or sale of securities in a capital-raising transaction, and do not directly or indirectly promote or maintain a market for the registrant's securities.

[69] The Commission permits issuers that are subject to Exchange Act reporting requirements to register the offer and sale of securities to employees pursuant to employee benefit plans on Form S–8. This form provides for abbreviated disclosure and automatic effectiveness upon filing. *See Adoption of Form S–8,* Release No. 33–3480 (June 16, 1953) [18 FR 3688 (June 27, 1953)]. *See also Registration and Reporting Requirements for Employee Benefit Plans,* Release No. 33–6867 (June 6, 1990) [55 FR 23909 (June 13, 1990)] (the ''1990 Form S–8 Release'').

[70] 17 CFR 230.701(c)(2).

[71] *See* the Rule 701 Adopting Release.

[72] Securities Act Rule 701(c) exempts offers and sales of securities (including plan interests and guarantees pursuant to paragraph (d)(2)(ii)) under a written compensatory benefit plan (or written compensation contract) established by the issuer, its parents, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer's parent, for the participation of their employees, directors, general partners, trustees (where the issuer is a business trust), officers, or consultants and advisors, and their family members who acquire such securities from such persons through gifts or domestic relations orders. This section exempts offers and sales to former employees, directors, general partners, trustees, officers, consultants and advisors only if such persons were employed by or providing services to the issuer at the time the securities were offered. In addition, the term ''employee'' includes insurance agents who are exclusive agents of the issuer, its subsidiaries or parents, or who derive more than 50% of their annual income from those entities. As explained in the 1999 Rule 701 Release at Section II.D, Rule 701 is also available to persons with a *de facto* employment relationship with the issuer. Such a relationship would exist where a person not employed by the issuer provides the issuer services that traditionally are performed by an employee and the compensation paid for those services is the primary source of the person's earned income.

[73] Form S–8 and Rule 701 are available for the exercise of employee benefit plan options by an employee's family member who has acquired the options from the employee through a gift or a domestic relations order. *See* the 1999 Form S–8 Release at Section III and the 1999 Rule 701 Release at Section II.E. As defined in Exchange Act Rule 701(c)(3) [17 CFR 230.701(c)(3)], for this purpose, ''family member'' includes any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the employee's household (other than a tenant or employee), a trust in which these persons have more than 50% of the beneficial interest, a foundation in which these persons (or the employee) control the management of assets, and any other entity in which these persons (or the employee) own more than 50% of the voting interests.

[74] The Commission adopted amendments to Form S–8 and the Rule 405 definition of ''employee benefit plan'' that made Form S–8 available for the issuance of securities to consultants or advisors only if: they are natural persons; they provide *bona fide* services to the registrant; and the services are not in connection with the offer or sale of securities in a capital-raising transaction, and do not directly or indirectly promote or maintain a market for the registrant's securities. *See* 1999 Form S–8 Release and 1999 Rule 701 Release. Rule 701(c)(1) applies the same limitations regarding consultants and advisors as those provided in Form S–8 and the Rule 405 definition of ''employee benefit plan.''

[75] As proposed, this amendment would not affect the definition of ''held of record'' when determining the number of holders for the purposes of termination of registration or suspension of reporting or with regard to the number of holders reported pursuant to Item 201(b) of Regulation S–K (17 CFR 229.201(b)).

[76] *See* letter from ABA recommending that the Commission provide ''that the safe harbor(s) is *not* the exclusive means by which an issuer may comply with the 'compensatory plan carve-out' provisions of Section 12(g)(5).'' This commenter suggested that ''failure to satisfy all conditions to reliance on the safe harbor(s) should not preclude reliance on the statutory carve-out itself.''

[77] *See id.*

[78] *See id.* The ''no sale'' theory relates to the issuance of compensatory grants made by employers to broad groups of employees pursuant to broad-based stock bonus plans under the theory that the awards are not an offer or sale of securities under Section 2(a)(3) of the Securities Act [15 U.S.C. 77b(a)(3)]. *See Employee Benefit Plans; Interpretations of Statute,* Release No. 33–6188 (Feb. 1, 1980) [45 FR 8960 (Feb. 11, 1980)] at Section II.A.5.d; *Employee Benefit Plans,* Release No. 33–6281 (Jan. 15, 1981) [46 FR 8446 (Jan. 27, 1981)] at Section III. Many issuers rely on the ''no sale'' theory when making such awards to employees where no consideration—and hence no ''value''—is received by the issuer in return. The staff has not objected to these issuances in a series of no-action letters. *See, e.g.,* no-action letter to *Verint Systems Inc.* (May 24, 2007).

requirements of Section 5 of the Securities Act or that did not involve a sale within the meaning of Section 2(a)(3) of the Securities Act; or

• held by persons eligible to receive securities from the issuer pursuant to Exchange Act Rule 701(c) who received the securities in a transaction exempt from the registration requirements of Section 5 of the Securities Act in exchange for securities excludable under proposed Rule 12g5–1(a)(7).

Section 502 of the JOBS Act refers specifically to ''transactions exempted'' from the Securities Act Section 5 registration requirements. A number of issuers, however, issue securities to employees without Securities Act registration on the basis that the issuance is not a sale under Section 2(a)(3) of the Securities Act and therefore do not trigger the registration requirement of Securities Act Section 5, which applies only to the offer and sale of securities. While securities issued to employees in transactions that do not involve a sale under Section 2(a)(3) are not technically ''transactions exempted from the registration requirements of section 5,'' they are similar to other compensatory issuances to employees in exempt transactions in that the issuer provides the awards to employees for a compensatory purpose. We are therefore proposing to exclude such ''no sale'' issuances from the definition of ''held of record'' in Rule 12g5–1 for purposes of determining an issuer's obligation to register a class of securities under the Exchange Act.

As proposed, the rule would also permit an issuer to exclude holders who are persons eligible to receive securities from the issuer pursuant to Rule 701(c) and who acquired the securities in exchange for securities excludable under the proposed definition.[79] The proposed exclusion is intended to facilitate the ability of an issuer to conduct restructurings, business combinations and similar transactions that are exempt from Securities Act registration so that if the securities being surrendered in such a transaction would not have been counted under the proposed definition of ''held of record,'' the securities issued in the exchange also would not be counted under this definition.[80] The securities issued in the exchange would be deemed to have a compensatory purpose because they would replace other securities previously issued pursuant to an employee compensation plan. We believe such an approach would be consistent with the intent of Section 502 of the JOBS Act and would provide issuers with appropriate flexibility to conduct certain business combinations and similar transactions.

2. Non-Exclusive Safe Harbor for Determining Holders of Record

We are proposing a non-exclusive safe harbor under proposed Rule 12g5–1(a)(7) that would provide that a person will be deemed to have received the securities pursuant to an employee compensation plan if such person received them pursuant to a compensatory benefit plan in transactions that met the conditions of Securities Act Rule 701(c).[81]

As proposed, an issuer would be able to rely on the safe harbor for determining the holders of securities issued in reliance on Securities Act Rule 701, as well as holders of securities issued in transactions otherwise exempted from, or not subject to, the registration requirements of the Securities Act that satisfy the conditions of Rule 701(c), even if all the other conditions of Rule 701, such as issuer eligibility in Rule 701(b)(1), the volume limitations in Rule 701(d) or the disclosure delivery provisions in Rule 701(e), were not met. Thus, the safe harbor would be available for holders of securities received in other employee compensation plan transactions exempted from, or not subject to, the registration requirements of Section 5 of the Securities Act, such as securities issued in reliance on Securities Act Section 4(a)(2), Regulation D of the Securities Act, or Regulation S of the Securities Act, that meet the conditions of Rule 701(c).

We believe that using the conditions of Rule 701(c) to structure the safe harbor for determining whether holders received their securities pursuant to an employee compensation plan in exempt transactions would allow issuers to apply well understood principles of an existing Securities Act exemption to the new Exchange Act registration determination under the JOBS Act. The safe harbor would be available for the plan participants enumerated in Rule 701(c), including employees, directors, general partners, trustees, officers and certain consultants and advisors.[82] The safe harbor also would be available for permitted family member transferees with respect to securities acquired by gift or domestic relations order, or securities acquired by them in connection with options transferred to them by the plan participant through gifts or domestic relations orders.[83] Because the safe harbor would be limited to holders who are persons specified in Rule 701(c) who received the securities under specified circumstances, once these persons subsequently transfer the securities, whether or not for value, the securities would need to be counted as held of record by the transferee for purposes of determining whether the issuer is subject to the registration and reporting requirements of Exchange Act Section 12(g)(1).

In addition, under the proposed rules, foreign private issuers[84] would be able to rely on the safe harbor when making their determination of the number of U.S. resident holders under Exchange Act Rule 12g3–2(a).[85] Under Rule 12g3–2(a), foreign private issuers that meet

[79] *See supra* note 72 and 73 and *infra* note 82 (describing the types of persons eligible to receive securities under Rule 701(c)).

[80] Consistent with Rule 701(c), securities held of record by former employees would be excluded when determining the securities held of record only if the employees were employed by or providing services to the surviving issuer at the time the exchange securities were offered.

[81] As proposed, failure to satisfy all of the conditions of the non-exclusive safe harbor would not preclude reliance on Section 12(g)(5) or other provisions of proposed Rule 12g5–1(a)(7).

[82] A de facto employee would be considered an employee for purposes of proposed Rule 12g5–1(a)(7). For purposes of Rule 701, the scope of eligible consultants and advisors is the same as under Form S–8. *See* 1999 Rule 701 Release at Section II.D and 1999 Form S–8 Release at Section II.A.1. This also would be the case for purposes of proposed Rule 12g5–1(a)(7). We note that unlike traditional employees, consultants and advisors typically provide their services to multiple clients rather than to the same issuer on a dedicated basis. This distinction may cause them to be less likely to hold the securities they receive as compensation and more likely to sell them. However, the fact that securities would no longer be eligible for the exclusion under the safe harbor following their transfer should limit the potential for abuse. We believe that in light of the Rule 701 restrictions applicable to consultants and advisors, the compensatory nature of the transactions justifies treating consultants and advisors who are eligible to receive securities in compensatory transactions that satisfy the conditions of Rule 701(c) as persons who receive securities pursuant to an employee compensation plan for purposes of the proposed safe harbor.

[83] *See Rule 701—Exempt Offerings Pursuant to Compensatory Arrangements,* Release No. 33–7511 (Feb. 27, 1998) [63 FR 10785 (Mar. 5, 1998)] at Section III.E.4. Including family member transferees in the safe harbor would be consistent with the approach in Rule 701(c), which provides an exemption to family member transferees in connection with stock options because of their common economic interest and the non-capital raising nature of the transactions.

[84] The definition of ''foreign private issuer'' is contained in Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)]. A foreign private issuer is any foreign issuer other than a foreign government, except for an issuer that (1) has more than 50% of its outstanding voting securities held of record by U.S. residents and (2) any of the following: (i) A majority of its officers and directors are citizens or residents of the United States; (ii) more than 50% of its assets are located in the United States; or (iii) its business is principally administered in the United States.

[85] 17 CFR 240.12g3–2(a).

the asset and shareholder threshold of Section 12(g) are exempt from registering any class of securities under that section if the class of securities is held by fewer than 300 holders resident in the United States. For purposes of determining whether this threshold is met, Rule 12g3–2(a)(1) specifies that the method shall be as provided in Exchange Act Rule 12g5–1, subject to specific provisions relating to brokers, dealers, banks and nominees.[86] Because the rule directs issuers to the definition of ''held of record'' in Rule 12g5–1, the statutory changes to Section 12(g)(5) as well as the proposed changes to Rule 12g5–1 would also apply to the determination of a foreign private issuer's U.S. resident holders for the purposes of the Rule 12g3–2(a) analysis.[87]

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9. Instead of leaving the term ''employee compensation plan'' undefined and providing a safe harbor for purposes of determining the number of holders of record under Section 12(g)(1), should we create a new definition for purposes of the determination? If a new definition would be preferable, please describe how ''employee compensation plan'' should be defined and explain why a definition would be preferable.

10. In some circumstances issuers may rely on a ''no sale'' theory under Section 2(a)(3) of the Securities Act to issue securities to employees. As proposed, securities held by persons who received those securities pursuant to an award to employees that did not involve a sale within the meaning of Securities Act Section 2(a)(3) would be excluded from the definition of ''held of record'' for purposes of determining an issuer's Exchange Act Section 12(g) registration obligations. Should these securities be excluded from the definition?

11. The exclusion from ''held of record'' in proposed Exchange Act Rule 12g5–1(a)(7)(i) for securities received pursuant to employee compensation plans would include within its scope holders of securities received pursuant to an employee compensation plan in transactions that do not involve a sale within the meaning of Section 2(a)(3) or that are exempt from the registration requirements of Section 5. Further, the safe harbor proposed in Rule 12g5–1(a)(7)(ii) would be available to securities issued in those transactions as long as the person received the securities pursuant to a compensatory benefit plan in transactions that met the conditions of Securities Act Rule 701(c). Should the scope of the safe harbor be more limited, such as by restricting it to securities received pursuant to exempt transactions that meet all of the requirements of Securities Act Rule 701, the requirements of Regulation D or another specified subset of exemptions? If so, please explain why.

12. We are proposing a non-exclusive safe harbor that relies, in part, on existing Rule 701(c) to establish guidelines for an issuer to use when determining whether holders of their securities received them pursuant to an employee compensation plan. Does using existing Rule 701(c) provide sufficient guidance to issuers? Should we provide additional guidance for implementing the safe harbor? If so, please explain what additional guidance is needed.

13. For purposes of the safe harbor, should we limit the categories of persons who may receive securities pursuant to employee compensation plans? For example, our proposed safe harbor includes consultants and advisors because they qualify under Rule 701. Should they only be included if they are natural persons and meet the other Rule 701(c) conditions, as proposed? Alternatively, should consultants and advisors be excluded?

14. Should we, as proposed, permit securities held by family member transferees acquired by gift or domestic relations order, or securities acquired by them in connection with options transferred to them by the plan participant through gifts or domestic relations orders to be excluded? If we modify the scope of the transferees or the type of securities, what modifications would be appropriate?

15. Exchange Act Rules 12h–1(f) and12h–1(g) exempt compensatory employee stock options from registration under Exchange Act Section 12(g) by exempting issuers from counting holders of stock options received pursuant to written compensatory stock option plans under specified conditions.[88] How does the exclusion provided by Section 502 of the JOBS Act and our proposals, including our proposal to exclude securities that do not involve a sale under Section 2(a)(3) of the Securities Act, affect the continuing need for these rules?[89] Should either Rule 12h–1(f) or Rule 12h–1(g) be rescinded in light of the amendments made by Section 502 of the JOBS Act and our proposals? Alternatively, are there any modifications needed to reflect the changes related to Section 502 and make the rules more useful?

16. Should we permit an issuer to exclude from the ''held of record'' determination securities issued to security holders in an exchange exempt from registration under the Securities Act where the securities surrendered by those holders in the exchange were received by them pursuant to a compensatory benefit plan that met the conditions of the proposed rule? As proposed, the exclusion would be limited to securities issued in an exchange exempt from Securities Act registration to persons eligible to receive securities pursuant to Rule 701(c) from the issuer, such as former employees who were employed by or providing services to the surviving issuer at the time the exchange securities were offered. Should the Commission consider expanding the exclusion to securities received by other former employees in such an exempt exchange where the securities to be surrendered in the exchange were received pursuant to a compensatory benefit plan in transactions that met the conditions of the proposed rule? Would the possibility that an exempt exchange could cause a number of former

[86] The proposed amendment to Rule 12g5–1 would be limited to determinations under Section 12(g). The definition of ''foreign private issuer'' in Exchange Act Rule 3b–4 contains a cross-reference to Rule 12g3–2(a) for purposes of calculating record ownership in determining whether more than 50% of an issuer's outstanding voting securities are directly or indirectly held by residents of the United States. In contrast to the proposed approach to Rule 12g3–2(a), we are proposing to amend Rule 3b–4 to clarify that securities held by employees must continue to be counted for the purpose of determining the percentage of the issuer's outstanding securities held by U.S. residents, and thus for determining whether an issuer qualifies as a foreign private issuer. *See* the proposed amended instruction to paragraph (c)(1) of Rule 3b–4.

[87] The definition of ''foreign private issuer'' under the Securities Act, which is found in Securities Act Rule 405 [17 CFR 230.405], is the same as the definition under Exchange Act Rule 3b–4. The definition of ''foreign private issuer'' under the Securities Act was last amended in *Foreign Issuer Reporting Enhancements,* Release No. 33–8959 (Sept. 23, 2008) [73 FR 58300 (Oct. 6, 2008)]. At that time, an instruction to paragraph (1) of the definition, which was the same as the Instruction to Paragraph (c)(1) of Rule 3b–4, was inadvertently omitted. We are proposing to amend the foreign private issuer definition under Rule 405 to reinsert the omitted instruction but with a proposed revision, identical to that proposed under Rule 3b–4, clarifying that securities held by employees must continue to be counted for the purposes of determining the percentage of the issuer's outstanding securities held by U.S. residents and foreign private issuer status under the Securities Act.

[88] *See* Compensatory Stock Options Release, *supra* note 57.

[89] *See* letter from ABA, which suggested that while Rule 12h–1(f) may no longer be necessary, Rule 12h–1(g) may have continuing applications. Specifically, there may be instances in which an issuer subject to an Exchange Act reporting requirement may issue to employees compensatory options that are part of a class of equity securities not registered under the Exchange Act.

employees previously counted as exempt from the ''held of record'' determination to be counted as holders of record immediately on consummation of the exchange inhibit companies from entering into these transactions?

17. Foreign private issuers are subject to different standards relating to when they are required to register a class of equity securities under the Exchange Act. Should the Commission permit foreign private issuers to exclude securities received pursuant to an ''employee compensation plan'' in transactions exempt from, or not subject to, the Securities Act registration requirements from the 300 U.S. holders threshold in Exchange Act Rule 12g3–2(a), as proposed? Should we instead require foreign private issuers to continue counting these securities when determining their number of U.S. holders? Should we further permit issuers to exclude such securities for purposes of assessing whether an issuer qualifies as a foreign private issuer or should such securities be included in this determination, as would be required under our proposed amendments to Securities Act Rule 405 and Exchange Act Rule 3b–4?

## IV. General Request for Comment

We request and encourage any interested person to submit comments regarding the proposed rule amendments, specific issues discussed in this release, and other matters that may have an effect on the proposed rules. We request comment from the point of view of issuers, investors and other market participants. We note that comments are of particular assistance to us if accompanied by supporting data and analysis of the issues addressed in those comments, particularly quantitative information as to the costs and benefits. If alternatives to the proposals are suggested, supporting data and analysis and quantitative information as to the costs and benefits of those alternatives are of particular assistance. Commenters are urged to be as specific as possible.

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18. Are there other rules or forms that should be revised or updated as a result of the statutory changes made by Title V and Title VI of the JOBS Act? If so, please explain what revisions are needed?

19. The definition of ''held of record'' in Exchange Act Rule 12g5–1 requires an issuer, for the purposes of determining whether it is subject to the provisions of Section 12(g) or Section 15(d), to count as holders of record only persons identified as owners on records of security holders maintained by or on behalf of the issuer in accordance with accepted practice and subject to certain conditions. This rule simplifies an issuer's determination process by allowing it to look to security holders that appear in its records. Are there alternative definitions of ''held of record'' that would more appropriately address the purposes of Section 12(g)? [90]

## V. Economic Analysis

Title V and Title VI of the JOBS Act increased the registration thresholds for issuers, amended the definition of ''held of record'' to exclude securities issued pursuant to employee compensation plans and increased the thresholds for termination of registration and suspension of reporting under the Exchange Act for banks and bank holding companies. The Commission is proposing rules to implement Title V and Title VI of the JOBS Act.

In proposing rules or amendments, we are mindful of the costs imposed by and the benefits obtained from our rules. The discussion below attempts to address the economic effects of the proposed amendments, including the likely costs and benefits of the amendments as well as the effect of the amendments on efficiency, competition and capital formation.[91] Some of the costs and benefits stem from the statutory mandates of Title V and Title VI, while others are affected by the discretion we exercise in revising our rules to reflect this mandate. These two types of costs and benefits may not be entirely separable to the extent our discretion is exercised to realize the benefits that we believe were intended by Title V and Title VI. We request comment on all aspects of the economic effects, such as the costs and benefits, of the amendments that we are proposing. We particularly appreciate comments that distinguish between the economic effects that are attributed to the statutory mandate itself and the economic effects that are the result of policy choices made by the Commission in implementing the statutory mandate.

*A. Baseline*

The baseline for our economic analysis of the proposed rules, including the baseline for our consideration of the effects on efficiency, competition and capital formation, is the state of the market as well as market practices prior to the JOBS Act. Prior to the JOBS Act, issuers were required to register their equity securities with the Commission upon reaching 500 holders of record and total assets of $10 million, and were allowed to terminate registration or suspend the duty to file with the Commission when the number of holders of record had fallen below 300. However, Exchange Act Rules 12h–1(f) and 12h–1(g) permitted issuers to exclude stock options issued under written compensatory benefit plans under certain conditions from the registration requirements of Section 12(g).

The JOBS Act raised the thresholds at which an issuer is required to register a class of equity securities with the Commission pursuant to Section 12(g), provided that persons holding certain employee compensation plan securities need not be counted when determining whether an issuer is required to register, and raised the thresholds at which banks and bank holding companies are permitted to terminate registration or suspend reporting obligations with the Commission. These statutory changes made by the JOBS Act went into effect as soon as the JOBS Act was signed into law. As a result of the JOBS Act, some banks and bank holding companies were newly eligible to terminate registration or suspend reporting, and as of June 30, 2014, we estimate that more than 90 have elected to do so.[92] We estimate that there are approximately 500 banks and bank holding companies that currently report to the Commission,[93] of which some may be eligible to terminate registration under the JOBS Act but have elected to continue reporting. We are proposing to amend specified Exchange Act rules to reflect the new, higher threshold for banks and bank holding companies under Section 12(g)(4) and Section

[90] In its consideration of the JOBS Act, Congress considered other definitions of ''held of record'' but ultimately did not define the term for purposes of the provisions of Section 12(g).

[91] Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact on competition that the rules would have, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act. 15 U.S.C. 78w(a). Further, Section 2(b) of the Securities Act [15 U.S.C. 77b(b)] and Section 3(f) of the Exchange Act [17 U.S.C. 78c(f)] require the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

[92] The Commission staff derived this estimate of the number of banks and bank holding companies that have elected to terminate registration or suspend reporting by analyzing Form 15 filings on EDGAR. Commission staff is continuing to monitor such filings.

[93] The Commission staff derived this estimate by analyzing annual filings submitted to the Commission during calendar year 2013.

15(d)(1). For those banks and bank holding companies that would be eligible to terminate registration under Section 12(g), the proposed rules set forth procedural accommodations that are available to other issuers under current rules to accelerate the process.

The proposed rules would also permit savings and loan holding companies to use the same, higher thresholds for registration, termination of registration and suspension of the reporting obligation that apply to banks and bank holding companies. There are approximately 125 savings and loan holding companies that currently report to the Commission.[94] As we explain in more detail below, we estimate that approximately 90 would be eligible to terminate registration or suspend reporting under the proposed rules.

In addition, the proposed rules would apply the definition of ''accredited investor'' in Securities Act Rule 501(a) in making determinations under Exchange Act Section 12(g)(1). Finally, the proposed rules would revise the definition of ''held of record'' and establish the scope of a non-exclusive safe harbor for issuers to rely on when determining whether securities were received pursuant to an employee compensation plan in transactions exempted from the registration requirements of Section 5 of the Securities Act or did not involve a sale within the meaning of Section 2(a)(3) of the Securities Act. The proposed safe harbor would rely on the definition of ''compensatory benefit plan'' in Securities Act Rule 701 and the conditions in Securities Act Rule 701(c).

We considered alternative definitions of ''employee compensation plan.'' We also considered whether to provide additional guidance with respect to the determination of accredited investor status when establishing the number of holders of record. These decisions may affect how a non-reporting issuer counts its holders of record for the purpose of the registration thresholds under the Exchange Act; hence it could affect whether an issuer can remain a non-reporting issuer. However, due to limited availability of shareholder information on these non-reporting issuers, we are unable to quantify the number of non-reporting issuers that might be affected by these decisions.

*B. Analysis of the Proposed Rules*

The proposal would affect registrants generally, and banks, bank holding companies and savings and loan holding companies specifically, as well as non-reporting issuers, employees and other investors. We analyze the costs and benefits associated with the proposed rules below.

Increased Thresholds for Banks and Bank Holding Companies

The JOBS Act amended Sections 12(g) and 15(d) of the Exchange Act to raise the thresholds at which banks and bank holding companies may terminate registration or suspend their obligations to file reports with the Commission to 1,200 holders of record. These changes were effective immediately upon the enactment of the JOBS Act, and banks and bank holding companies may rely on the amended provisions to terminate registration or suspend their reporting obligations. However, under the statute, banks and bank holding companies that want to use the higher threshold must wait 90 days after filing a certification with the Commission that the number of holders of record is less than 1,200 persons to terminate their Section 12(g) registration and cease filing reports required by Section 13(a) and must wait until the first day of the fiscal year to suspend any Section 15(d) reporting obligations. Our existing rules afford issuers with procedural accommodations that let them suspend their reporting obligations immediately upon the filing of a certification on Form 15. To make these procedural accommodations applicable to banks and bank holding companies at the higher threshold, we are proposing to revise Exchange Act Rules 12g–2, 12g–3, 12g–4 and 12h–3 to reflect the 1,200 holders threshold for banks and bank holding companies, which would permit banks and bank holding companies to rely on the rules to cease reporting during a fiscal year, rather than wait the prescribed 90 days or until the end of the reporting year. This would reduce issuer compliance and reporting costs during the fiscal year the issuer ceased reporting, but would also accelerate the loss of investor access to current information about the issuer. The proposed changes also would harmonize the statutory and regulatory thresholds and lessen potential confusion that could arise from the differences in the thresholds contained in the statute and the existing rules.

We estimate that there are approximately 500 banks and bank holding companies that currently report with the Commission. Many of these reporting issuers have more than 1,200 holders of record and would not be eligible to cease reporting under the new thresholds. Out of that 500, 143 reporting banks and bank holding companies have between 300 and 1,200 holders of record and may be eligible to cease reporting, although 89 of them would have to give up a national exchange listing to do so. Because banks and bank holding companies remain subject to other regulatory reporting requirements,[95] it is possible that they would continue reporting even if they are eligible to cease reporting under the Exchange Act. We anticipate that banks and bank holding companies would weigh the benefits of being a public company against the burden of additional disclosure costs, in deciding whether to terminate registration or suspend their reporting obligation. Commonly cited benefits of being a public company include the ability to obtain a lower cost of capital for investment and growth, increased liquidity through a broader shareholder base, and greater ability to finance acquisitions and offer equity-based incentive contracts.[96] Commonly cited costs of being a public company include the need to comply with increased regulations and regulatory supervision, including requirements for independent audits, disclosure of information to competitors, loss of control and ownership dilution.[97]

Permitting Savings and Loan Holding Companies To Use the Higher Thresholds

We are proposing to apply the 2,000-holders of record threshold for registration to savings and loan holding companies in revised Exchange Act Rule 12g–1. We are also proposing to

[94] *Id.*

[95] *See supra* note 41.

[96] *See* J. Brau, *Why Do Firms Go Public?, Oxford Handbook of Entrepreneurial Finance* (2010) (providing a general discussion of the different rationales for firms to go public); U. Celikyurt, M. Sevilir, and A. Shivdasani, *Going Public to Acquire? The Acquisition Motive in IPOs,* J. FIN. ECON. (2010) (arguing that firms go public so as to facilitate acquisitions); M. Pagano, F. Panetta, and L. Zingales, *Why Do Companies Go Public? An Empirical Analysis,* J. FIN. (1998) (showing that IPOs are generally followed by lower cost of credit and increased turnover in control); T. Chemmanur and P. Fulghieri, *A Theory of the Going Public Decision,* REV. FIN. STUD. (1999) (arguing that going public broadens the ownership base of the firm); R. Rosen, S. Smart and C. Zutter, *Why Do Firms Go Public? Evidence From the Banking Industry,* Working Paper (2005) (finding that banks that go public are more likely to grow faster, earn higher profits, employ more leverage and become acquirers when compared to their non-reporting counterparts).

[97] *See* J. Brau and S. Fawcett, *Initial Public Offerings: An Analysis of Theory and Practice,* J. FIN. (2006) (reporting based on a survey of CFOs that ''desire to maintain decision-making control,'' ''disclosing information to competitors,'' ''SEC reporting requirements'' and ''to avoid ownership dilution'' are among the top five reasons why firms choose to stay private); J. Farre-Mensa, *Why Are Most Firms Privately Held?,* Working paper, Harvard University (2011) (documenting that firms in industries with high disclosure costs (*i.e.,* where it is easier for competitors to appropriate a firm's intellectual property) tend to remain private).

extend the increased thresholds established by Section 601 of the JOBS Act to savings and loan holding companies by specifically including them in revisions to Exchange Act Rules 12g–2, 12g–3, 12g–4 and 12h–3 that accommodate banks and bank holding companies at the higher 1,200 holders of record threshold for termination of registration or suspension of the duty to file reports. As a result, savings and loan holding companies would be able to delay registration with the Commission until they reach the 2,000-holder threshold, and savings and loan holding companies with between 300 and 1,199 holders of record would be newly eligible to terminate or suspend their Exchange Act reporting obligations.

We estimate that approximately 125 savings and loan holding companies had a class of securities registered pursuant to the Exchange Act as of June 30, 2014; [98] of these approximately 100 are registered pursuant to Section 12(b). By analyzing the number of holders of record for these companies, the staff determined that approximately 90 of the 125 savings and loan holding companies would be eligible to terminate registration or suspend reporting. Most of the newly eligible companies would have to give up a national securities exchange listing to do so. Because delisting from a national securities exchange could severely impact the liquidity of traded securities, many of these savings and loan holding companies may be unwilling to suspend their reporting requirements even if such an action was available to them. We therefore do not expect many of these savings and loan holding companies to avail themselves of the extended provisions.

If we do not extend the provisions of Section 601 to savings and loan holding companies, there would be inconsistent treatment relative to banks and bank holding companies, resulting in different registration requirements and levels of disclosure for savings and loan holding companies that provide similar services and are generally subject to the same regulatory requirements. This could have an adverse impact on their ability to compete. Alternatively, savings and loan holding companies could seek to become chartered as banks or bank holding companies and thereby incur associated costs; this could distort the competitive balance of products and services offered by these institutions.

Applying consistent treatment between savings and loan holding companies and banks and bank holding companies would lessen the likelihood of changes to the current competitive balance between these institutions. Moreover, the potential loss of information that would otherwise be made public through Exchange Act reporting if the provisions of Section 601 are extended to savings and loan holding companies would be mitigated because the savings and loan holding companies would continue to file reports with banking regulators.[99] As a result, extending the relief to savings and loan holding companies to provide consistent treatment relative to banks and bank holding companies may have a positive impact on the overall efficiency of markets served by the potentially affected institutions.

Definition and Safe Harbor for Securities ''Held of Record''

Section 12(g)(5), as amended by Section 502 of the JOBS Act, excludes from the definition of ''held of record'' securities held by persons who received them pursuant to an employee compensation plan in transactions exempted from the registration requirements of Section 5 of the Securities Act for purposes of determining whether an issuer is required to register a class of security pursuant to Section 12(g)(1). Section 503 of the JOBS Act directs the Commission to adopt a safe harbor that issuers can use when making the holder of record determination. By making it easier for non-reporting companies that issue securities to their employees to remain below the registration and reporting thresholds in the Exchange Act, the statutory changes could benefit issuers by allowing them to better control how and when they become subject to the reporting requirements, while continuing to use securities to compensate employees. These changes could be particularly beneficial for smaller or cash-constrained issuers that could more easily issue securities to their employees as a form of compensation without being subject to Exchange Act reporting requirements and the associated compliance costs. However, for these issuers, the potential registration of a class of securities and the associated reporting may be delayed, adversely impacting investors, including employees, who otherwise might benefit from the information provided through Exchange Act reporting requirements. As a result, the proposed rules regarding the definition of ''held of record'' and the scope of the safe harbor could have an impact on the potential costs and benefits to the affected issuers and their investors by affecting areas such as the ease of relying upon the statutory exemption, the number of non-reporting companies able to forestall registration, and the amount of information available to investors in those issuers.

Instead of establishing a new definition for the term ''employee compensation plan,'' we are proposing to amend the definition of ''held of record'' to permit an issuer to exclude securities held by persons who received them pursuant to an employee compensation plan in transactions exempted from the registration requirements of Section 5 of the Securities Act, or not involving a sale within the meaning of Section 2(a)(3) of the Securities Act. Proposing to exclude securities issued to employees in transactions that do not involve a sale under Section 2(a)(3) from the definition of ''held of record'' for purposes of determining an issuer's obligation to register a class of securities under the Exchange Act would be beneficial to issuers who rely on the ''no sale'' theory when making compensatory grants to certain employees. Excluding such ''no sale'' securities could reduce the number of holders of record of an issuer and potentially delay required Exchange Act reporting.

We are also proposing to establish a non-exclusive safe harbor that relies on Securities Act Rule 701(c) and the definition of ''compensatory benefit plan'' in that rule to assist issuers in making the determination of whether holders of securities received pursuant to an employee compensation plan may be excluded. We believe that relying on an existing definition that is already understood by market participants would make it easier for issuers to avail themselves of this safe harbor than if we proposed a new alternative definition. The proposed non-exclusive safe harbor relies upon the conditions in existing Rule 701(c). While generally broad in application, the conditions in Rule 701(c) provide limitations, such as requiring that securities be sold under a compensatory benefit plan, that the plan be written, that the plan be established

[98] The Commission staff derived this estimate by analyzing annual filings submitted to the Commission.

[99] While the proposed rules should have effects on competition by ensuring that savings and loan holding companies are not put at a disadvantage relative to banks and bank holding companies, the termination of registration or suspension of reporting by savings and loan holding companies may lessen the information available to investors and adversely affect efficiency and capital formation by possibly increasing information asymmetries, monitoring costs, and cost of capital. However, the impact on efficiency and capital formation may be mitigated to the extent that the reports that savings and loan holding companies file with banking regulators contain information comparable to that mandated by the reporting requirements under the Exchange Act.

by the issuer or certain specified related entities and that participation be limited to employees and certain other specified persons. Although we are unable to quantify the impact of proposing this safe harbor because we cannot measure the number of issuers that would rely on the safe harbor, we can qualitatively assess the proposed safe harbor's impact. A safe harbor that applies the familiar concepts of existing Rule 701(c) should create efficiencies in applying the safe harbor and avoid conflicts with existing rules, which should reduce costs more significantly for smaller issuers seeking to rely upon the proposed safe harbor.

Foreign private issuers would be able to rely on the proposed safe harbor when making their determination of the number of U.S. resident holders under Exchange Act Rule 12g3–2(a). While we are unable to quantify the number of foreign private issuers that would be impacted, we acknowledge that it may allow some foreign private issuers to delay registering with and reporting to the Commission. The considerations about cost and benefit tradeoffs for foreign private issuers would be analogous to the ones discussed above for domestic issuers.

Use of the Term ''Accredited Investor'' in Exchange Act Section 12(g)

Section 501 of the JOBS Act raises the threshold number of holders of record at which an issuer is required to register a class of equity securities under the Exchange Act to 2,000 persons or 500 persons who are not accredited investors. The provision was effective upon enactment of the JOBS Act. In order for an issuer to rely on the new, higher threshold established by the JOBS Act, the issuer will need to be able to make accredited investor determinations if it has more than 500 holders of record.

We propose that the definition of ''accredited investor'' as specified in Securities Act Rule 501(a) determined as of the last day of the fiscal year rather than at the time of sale of the securities apply when making determinations under Exchange Act Section 12(g)(1). Issuers are familiar with this definition, which should facilitate compliance. Developing an alternative definition for purposes of Section 12(g)(1) could impose costs on issuers by requiring them to familiarize themselves with, and apply, a new and different standard. We are unable to estimate how many issuers would be impacted by using the Rule 501(a) definition of ''accredited investor'' as compared to an alternative definition. We acknowledge that not providing specific guidance or rules on how to confirm a security holder's status as an accredited investor for purposes of determining holders of record could result in some uncertainty for issuers.

Some commenters have recommended that the Commission address potential compliance issues related to the accredited investor threshold by providing a safe harbor for determining accredited investor status.[100] We could, among other things, permit an issuer to rely on an annual affirmation of accredited investor status by the investor or rely on an ongoing basis on information regarding accredited investor status received by the issuer at the time the securities were initially issued to the investor or at the time the securities were most recently issued to the investor, or permit issuers to otherwise rely on information previously provided by an investor.

Addressing potential compliance issues relating to the use of ''accredited investor'' in Section 12(g) could increase efficiency by providing issuers with a prescribed process to determine and update the accredited investor status of their investors. For example, a safe harbor that permits an issuer to rely on an annual affirmation of accredited investor status by the investor, other information obtained by the issuer or on a combination of a certification and other information would likely be less costly than requiring an issuer to establish a reasonable basis for its determination through other means. These methods, however, may be less accurate in establishing whether the investor is accredited.

Alternatively, a safe harbor that permits an issuer to rely on an ongoing basis on information previously obtained relating to accredited investors status, such as allowing reliance on information obtained by the issuer at the time the securities were initially issued to the investor or at the time the securities were most recently issued to the investor would likely be even less costly than requiring the issuer to seek an annual affirmation of accredited investor status by the investor or to establish a reasonable belief that the investor is an accredited investor, but could also lead to more outdated information. Permitting issuers to rely on inaccurate information to determine accredited investor status could result in issuers with more than 500 non-accredited investors failing to register and leaving investors in those issuers with less information and protection under the federal securities laws. These costs may be mitigated if the safe harbor specified time limits on the permitted use of the information or if the safe harbor were conditioned upon the issuer not having information that the previously obtained information was incorrect, unreliable or had changed.

Another alternative would be a safe harbor that permits an issuer to rely on a third party certification for determining the accredited investor status of investors. We do not have adequate information about third party certification providers and the characteristics of this industry to assess this alternative in terms of reliability and cost of the provided certification services. To the extent that reputational concerns would incentivize the third party certification providers to perform reliable and updated due diligence, third party certification could potentially provide accurate information at a cost that economies of scale may lessen.

Request for Comment

18. In this release we have discussed the anticipated costs and benefits of the proposed rules. We request data to quantify the costs and the value of the benefits described throughout this release. We seek estimates of these costs and benefits, as well as any costs and benefits not described, that may result from the adoption of these proposed amendments. We also request comments on the qualitative benefits and costs we have identified and any benefits and costs we may have overlooked.

## VI. Paperwork Reduction Act

Certain provisions of our disclosure rules and forms applicable to issuers contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[101] The hours and costs associated with preparing and filing forms and retaining records constitute reporting and cost burdens imposed by the collection of information requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid Office of Management and Budget (''OMB'') control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the collections of information.

The amendments proposed today do not alter the disclosure requirements set forth in the rules and forms; however,

[100] *See, e.g.,* letters from ABA, Foley & Lardner and NYCBA.

[101] 44 U.S.C. 3501 *et seq.*

the JOBS Act amendments to Exchange Act Sections 12(g) and 15(d) and the proposed amendments to our rules to reflect those statutory amendments are expected to immaterially decrease the number of filings made pursuant to these rules and forms. Exchange Act Rules 12g–1, 12g–2, 12g–3, 12g–4 and 12h–3 set forth when an issuer's securities are required to be registered and the procedures for a registrant to terminate its registration or suspend its duty to file reports. The proposed amendments would provide thresholds that issuers may rely on when determining their registration and reporting obligations and would allow savings and loan holding companies to use the same registration and termination of registration or suspension of reporting thresholds that apply to banks and bank holding companies.[102] Exchange Act Section 12(g)(5) and the proposed amendment to Exchange Act Rule 12g5–1 also exclude securities received pursuant to certain employee compensation plans from the determination of when an issuer is required to initially register with the Commission. These changes would reduce the number of registrants required to continue filing with the Commission and also reduce the number of issuers required to initially register a class of securities.[103] For purposes of the PRA, we estimate that the amendments would not materially reduce the number of filings received, nor would the changes affect the incremental burden or cost per filing.

The titles for the affected collections of information are:

(1) ''Form 10'' (OMB Control No. 3235–0064); [104]

(2) ''Form 20–F'' (OMB Control No. 3235–0288); [105]

(3) ''Form 40–F'' (OMB Control No. 3235–0381); [106]

(4) ''Form 10–K'' (OMB Control No. 3235–0063); [107]

(5) ''Form 10–Q'' (OMB Control No. 3235–0070); [108]

(6) ''Form 8–K'' (OMB Control No. 3235–0060); [109]

(7) ''Schedule 14A'' (OMB Control No. 3235–0059); [110]

(8) ''Schedule 14C'' (OMB Control No. 3235–0057); [111]

(9) ''Form 15'' (OMB Control No. 3235–0167).

The forms were adopted under the Exchange Act and set forth the disclosure requirements for periodic, current and other reports required to be filed by issuers registered with the Commission.

We estimate that there are approximately 625 Exchange Act registrants that are bank holding companies or savings and loan holding companies. We estimate that approximately 90 bank holding companies have filed Forms 15 to terminate or suspend their reporting obligations under the Exchange Act based on the statutory changes in the JOBS Act.[112] We further estimate that approximately 90 savings and loan holding companies or similar entities with fewer than 1,200 holders of record would be eligible to file a Form 15 after our proposed changes. To put these numbers in context, the current PRA estimate for the number of annual reports on Form 10–K filed annually is 8,137. Because the proposed rule amendments do not affect our estimates of the burden or cost per filing and we do not anticipate a material decrease in the number of filings as a result of the proposed rule amendments, we are not submitting revised burden estimates for these collections of information to OMB for review in accordance with the PRA and its implementing regulations at this time.[113]

We request comment on our approach and the accuracy of the current estimates. Pursuant to 44 U.S.C. 3506(c)(2)(A), the Commission solicits comments to: (1) Evaluate 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; (2) evaluate the accuracy of the Commission's estimate of burden of the collection of information; (3) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collection of information on those who are required to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File No. S7–12–14. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–12–14, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

## VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[114] the Commission must advise OMB as to whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment or innovation.

If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review.

We request comment on whether our proposed amendments would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;

[102] We are proposing to amend Rule 12g–1 to reflect the new higher thresholds in Section 12(g)(1) and to establish an increased registration threshold for savings and loan holding companies.

[103] The changes to Rule 12g5–1 are expected to affect the number of issuers required to register with the Commission; however, we do not have access to data to support an estimate of the number of issuers that will not be required to file reports based on the JOBS Act amendments and our proposed implementation of such amendments. Due to the lack of data, for PRA purposes we are not intending to provide a reduced estimate of the number of issuers.

[104] 17 CFR 249.10.

[105] 17 CFR 249.220f.

[106] 17 CFR 249.240f.

[107] 17 CFR 249.310.

[108] 17 CFR 249.308a.

[109] 17 CFR 249.308.

[110] 17 CFR 240.14a–101.

[111] 17 CFR 240.14c–101.

[112] After the JOBS Act became effective, we saw an increase in the number of termination and suspension of registrations by bank holding companies. We do not anticipate a similar rate of deregistration for bank holding companies after revising our rules to reflect the new, higher deregistration threshold.

[113] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[114] Public Law 104–121, Tit. II, 110 Stat. 857 (1996).

• any potential increase in costs or prices for consumers or individual industries; and

• any potential effect on competition, investment or innovation.

We request those submitting comments to provide empirical data and other factual support for their views to the extent possible.

## VIII. Initial Regulatory Flexibility Act Analysis

The Commission has prepared this Initial Regulatory Flexibility Act Analysis in accordance with 5 U.S.C. 603. This Initial Regulatory Flexibility Act Analysis relates to the proposed amendments to Securities Act Rule 405 and Exchange Act Rules 3b–4, 12g–1, 12g–2, 12g–3, 12g–4, 12g5–1, and 12h–3.

### *A. Reasons for, and Objectives of, the Proposed Action*

The primary reason for, and objective of, the proposed amendments is to implement Title V and Title VI of the JOBS Act. The JOBS Act directs the Commission to issue rules to implement the changes and specifically charges the Commission with amending the definition of ''held of record'' and establishing a safe harbor for the determination relating to ''employee compensation plan'' securities. We are proposing rules that would revise existing rules to reflect the new, higher Exchange Act registration, termination of registration and suspension of reporting thresholds for banks and bank holding companies, apply the definition of ''accredited investor'' in Securities Act Rule 501(a) in making determinations under Exchange Act Section 12(g)(1), revise the definition of ''held of record'' to exclude certain securities held by persons who received them pursuant to employee compensation plans, and establish a non-exclusive safe harbor for issuers to follow when determining whether those securities are ''held of record.'' We are also proposing to provide relief from the Exchange Act registration requirements for savings and loan holding companies by applying the same thresholds to savings and loan holding companies that apply to banks and bank holding companies. Permitting savings and loan holding companies to register, terminate registration and suspend reporting using the same thresholds as banks and bank holding companies would provide consistent treatment across depository institutions. Revising the definition and providing a non-exclusive safe harbor to issuers relating to the determination of securities ''held of record'' would further assist issuers in determining which holders of record they are required to count under the registration requirements of Exchange Act Section 12(g).

### *B. Small Entities Subject to the Proposed Rules*

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[115] Exchange Act Rule 0–10(a)[116] defines an entity, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 900 issuers that are required to file with the Commission, other than investment companies, that may be considered small entities.

The proposed rules establishing the use of the Securities Act Rule 501(a) definition of ''accredited investor'' under Exchange Act Section 12(g)(1) and amending the definition of ''held of record'' to exclude certain securities held by persons who received them pursuant to employee compensation plans and establishing a non-exclusive safe harbor for issuers to follow when determining whether those securities are ''held of record'' may affect small issuers relying on the revised rules and safe harbor to determine the number of holders of record. While an issuer is not required to register a class of equity securities pursuant to Section 12(g) of the Exchange Act until the issuer's total assets exceed $10 million, a small business or small organization may rely on the rules when determining to whom to issue securities and whether to compensate employees with securities. By providing guidance on the meaning of the term ''accredited investor'' in the Exchange Act context, the proposed rules may facilitate private offerings and the ability of an issuer to determine their registration and reporting obligations. By excluding certain employee compensation securities from the definition of ''held of record,'' the proposed rules would facilitate the use of equity compensation by small issuers, thereby helping them to preserve cash and giving them greater ability to determine when the Exchange Act Section 12(g) registration obligation would be triggered.

We cannot estimate the number of small entities affected by these proposed rules. By definition, they are not yet subject to Section 12(g) registration and reporting requirements, which are triggered by the issuer having total assets exceeding $10 million as of the last day of its fiscal year. We do not otherwise have information about the number of shareholders at small entities, including those who have received securities as a result of employee compensation plans. We request comment on the number of small entities that would be impacted by our proposals, including any available empirical data.

### *C. Projected Reporting, Recordkeeping and Other Compliance Requirements*

When determining whether an issuer must register under Section 12(g)(1), the issuer would be permitted to rely on the proposed rules. The proposed use of the Securities Act Rule 501(a) definition of ''accredited investor'' and safe harbor under the proposed amendment to the definition of ''held of record'' would assist an issuer in determining the number of holders of record. In order for an issuer to rely on the safe harbor, the securities would need to be issued in a transaction exempt from, or not subject to, the registration requirements and satisfy the requirements of Rule 701(c), which includes the requirement that the securities be offered or sold under a written compensatory benefit plan or written compensation contract. In addition, issuers seeking to rely upon the safe harbor may need to maintain records to help establish their compliance with the safe harbor conditions. We are not aware of any other recordkeeping or compliance requirements associated with the proposed definition and safe harbor.

The proposed rules and amendments affecting banks, bank holding companies and savings and loan holding companies would not add any new reporting, recordkeeping or other compliance requirements on those entities and we are not aware of any bank, bank holding company, or savings and loan holding company registrants with less than $5 million in assets. The proposed rules would raise the thresholds relating to registration for those entities and reduce their compliance burdens.

### *D. Duplicative, Overlapping or Conflicting Federal Rules*

The Commission believes that there are no rules that duplicate, overlap or conflict with the proposed rules or amendments.

[115] 17 CFR 270.0–10(a).

[116] 17 CFR 240.0–10(a).

*E. Significant Alternatives*

Pursuant to Section 3(a) of the Regulatory Flexibility Act,[117] the Commission must consider certain types of alternatives, including: (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 rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part of the rule, for small entities.

We are proposing that the current definition of ''accredited investor'' in Securities Act Rule 501(a) apply in making determinations under Exchange Act Rule 12g–1(b)(1). We could develop a new definition of ''accredited investor'' for purposes of Section 12(g)(1); however, given the prevalence of the use of Regulation D for exempt offerings, many issuers are familiar with and rely upon the definition in Rule 501(a). The increased registration threshold established by the JOBS Act is intended to permit issuers, including small entities, to defer Exchange Act registration until issuers have a larger shareholder base. Because proposed Rule 12g–1(b)(1) is intended to facilitate an issuer's ability to make the determination of when it is required to register, we believe use of the familiar Rule 501(a) definition of ''accredited investor'' will further this regulatory objective for all issuers, including small entities.

The proposed amendment to the definition of ''held of record'' and related safe harbor, if adopted, would apply to all issuers, including small entities, that choose to exclude securities held by persons who received them pursuant to employee compensation plans in certain exempt transactions or transactions not involving a sale within the meaning of Securities Act Section 2(a)(3). The proposed amendment and safe harbor help define the contours of an exemption from registration for issuers that might otherwise cross the Section 12(g) registration thresholds.

The proposed rules are intended to permit issuers, including small entities, to exclude certain securities from the determination and to assist issuers in making that determination by clarifying and simplifying requirements for all entities. Establishing different compliance or reporting requirements relating to employee compensation plan securities or accredited investor determinations for small entities could complicate the rules and make them more difficult to apply as those issuers grow, cease to be small entities, and are required to determine whether they must register with the Commission.[118] With respect to the use of performance standards rather than design standards, we note that the holder of record threshold is a statutorily created design standard, requiring issuers to register if their holders of record coupled with their total assets cross the threshold. As we are modifying the definition of ''held of record'' and clarifying the determination of ''accredited investor'' under this statutory design standard, we did not evaluate whether a performance standard would be more useful.

*F. Solicitation of Comment*

We are soliciting comments regarding this analysis. We request comment on the number of small entities that would be subject to the rules and whether the proposed rules would have any effects that have not been discussed. We request that commenters describe the nature of any effects on small entities subject to the rules and provide empirical data to support the nature and extent of the effects.

## IX. Statutory Authority and Text of Proposed Rule Amendments

The amendments contained in this release are being proposed under the authority set forth in Section 19 of the Securities Act, as amended, Sections 3(b), 12(g), 12(h), 15(d) and 23(a) of the Exchange Act, as amended, and Section 503 and Section 602 of the JOBS Act.

### List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

### Text of the Amendments

For the reasons set out above, the Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations, as follows:

## PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for part 230 continues to read as follows:

**Authority:** 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78*o,* 78*o*–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 2. Amend § 230.405 by adding an Instruction to paragraph (1) to the definition of ''Foreign private issuer'' to read as follows:

**§ 230.405 Definitions of terms.**

* * * * *

*Foreign private issuer.* (1) * * *

INSTRUCTION TO PARAGRAPH (1): To determine the percentage of outstanding voting securities held by U.S. residents:

A. Use the method of calculating record ownership in § 240.12g3–2(a) of this chapter, except that:

(1) The inquiry as to the amount of shares represented by accounts of customers resident in the United States may be limited to brokers, dealers, banks and other nominees located in:

(i) The United States,

(ii) The issuer's jurisdiction of incorporation, and

(iii) The jurisdiction that is the primary trading market for the issuer's voting securities, if different than the issuer's jurisdiction of incorporation; and

(2) Notwithstanding § 240.12g5–1(a)(7)(i)(A) of this chapter, the issuer shall not exclude securities held by persons who received the securities pursuant to an employee compensation plan.

B. If, after reasonable inquiry, the issuer is unable to obtain information about the amount of shares represented by accounts of customers resident in the United States, the issuer may assume, for purposes of this definition, that the customers are residents of the jurisdiction in which the nominee has its principal place of business.

C. Count shares of voting securities beneficially owned by residents of the United States as reported on reports of beneficial ownership provided to the issuer or filed publicly and based on information otherwise provided to the issuer.

* * * * *

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The general authority citation for part 240 is revised to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C.

[117] 5 U.S.C. 603(c).

[118] Under Section 12(g) an issuer is not required to register unless the issuer has total assets exceeding $10 million at the end of its fiscal year.

2(c)(2)(E); 12 U.S.C. 5221(e)(3), and 18 U.S.C. 1350, Pub. L. 111–203, 939A, 124 Stat. 1376, 2010, and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 4. Amend § 240.3b–4 by revising the Instruction to Paragraph (c)(1) to read as follows:

**§ 240.3b–4 Definition of ''foreign government,'' ''foreign issuer'' and ''foreign private issuer''.**

* * * * *

(c) * * *

INSTRUCTION TO PARAGRAPH (c)(1): To determine the percentage of outstanding voting securities held by U.S. residents:

A. Use the method of calculating record ownership in § 240.12g3–2(a), except that:

(1) Your inquiry as to the amount of shares represented by accounts of customers resident in the United States may be limited to brokers, dealers, banks and other nominees located in:

(i) The United States,

(ii) Your jurisdiction of incorporation, and

(iii) The jurisdiction that is the primary trading market for your voting securities, if different than your jurisdiction of incorporation; and

(2) Notwithstanding § 240.12g5–1(a)(7)(i)(A) of this chapter, you shall not exclude securities held by persons who received the securities pursuant to an employee compensation plan.

B. If, after reasonable inquiry, you are unable to obtain information about the amount of shares represented by accounts of customers resident in the United States, you may assume, for purposes of this definition, that the customers are residents of the jurisdiction in which the nominee has its principal place of business.

C. Count shares of voting securities beneficially owned by residents of the United States as reported on reports of beneficial ownership provided to you or filed publicly and based on information otherwise provided to you.

* * * * *

■ 5. Revise § 240.12g–1 and the section heading to read as follows:

**§ 240.12g–1 Registration of securities; Exemption from section 12(g).**

An issuer is not required to register a class of equity security pursuant to section 12(g)(1) of the Act (15 U.S.C. 78*l*(g)(1)) if on the last day of its most recent fiscal year:

(a) The issuer had total assets not exceeding $10 million; or

(b) (1) The class of equity security was held of record by fewer than 2,000 persons or 500 persons who are not accredited investors (as such term is defined in § 230.501(a) of this chapter, determined on such day rather than at the time of the sale of the securities); or

(2) In the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); the class of equity security was held of record by fewer than 2,000 persons.

■ 6. Revise § 240.12g–2 to read as follows:

**§ 240.12g–2 Securities deemed to be registered pursuant to section 12(g)(1) upon termination of exemption pursuant to section 12(g)(2)(A) or (B).**

Any class of securities which would have been required to be registered pursuant to section 12(g)(1) of the Act (15 U.S.C. 78*l*(g)(1)) except for the fact that it was exempt from such registration by section 12(g)(2)(A) of the Act (15 U.S.C. 78*l*(g)(2)(A)) because it was listed and registered on a national securities exchange, or by section 12(g)(2)(B) of the Act (15 U.S.C. 78*l*(g)(2)(B)) because it was issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), shall upon the termination of the listing and registration of such class or the termination of the registration of such company and without the filing of an additional registration statement be deemed to be registered pursuant to section 12(g)(1) if at the time of such termination:

(a) The issuer of such class of securities has elected to be regulated as a business development company pursuant to sections 55 through 65 of the Investment Company Act of 1940 (15 U.S.C. 80a–54 through 64) and such election has not been withdrawn; or

(b) Securities of the class are not exempt from such registration pursuant to section 12 of the Act (15 U.S.C. 78*l*) or rules thereunder and all securities of such class are held of record by 300 or more persons, or in the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); 1,200 or more persons.

■ 7. Amend § 240.12g–3 by revising paragraphs (a)(2), (b)(2) and (c)(2) to read as follows:

**§ 240.12g–3 Registration of securities of successor issuers under section 12(b) or 12(g).**

(a) * * *

(2) All securities of such class are held of record by fewer than 300 persons, or in the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); 1,200 persons.

* * * * *

(b) * * *

(2) All securities of such class are held of record by fewer than 300 persons, or in the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); 1,200 persons.

* * * * *

(c) * * *

(2) All securities of such class are held of record by fewer than 300 persons, or in the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); 1,200 persons.

* * * * *

■ 8. Amend § 240.12g–4 by revising paragraph (a) to read as follows:

**§ 240.12g–4 Certifications of termination of registration under section 12(g).**

(a) Termination of registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78*l*(g)) shall take effect 90 days, or such shorter period as the Commission may determine, after the issuer certifies to the Commission on Form 15 (§ 249.323 of this chapter) that the class of securities is held of record by:

(1) Fewer than 300 persons;

(2) Fewer than 500 persons, where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years; or

(3) In the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); fewer than 1,200 persons.

* * * * *

■ 9. Amend § 240.12g5–1 by adding paragraph (a)(7) to read as follows:

**§ 240.12g5–1 Definition of securities ''held of record''.**

* * * * *

(a) * * *

(7)(i) For purposes of determining whether an issuer is required to register a class of equity securities with the Commission pursuant to section 12(g)(1) of the Act (15 U.S.C. 78*l*(g)(1)), an issuer may exclude securities:

(A) Held by persons who received the securities pursuant to an employee compensation plan in transactions;

(*1*) Exempt from the registration requirements of section 5 of the Securities Act of 1933 (15 U.S.C. 77e); or

(*2*) That did not involve a sale within the meaning of section 2(a)(3) of the Securities Act of 1933 (15 U.S.C. 77b(a)(3)); and

(B) Held by persons eligible to receive securities from the issuer pursuant to § 230.701(c) of this chapter who received the securities in a transaction exempt from the registration requirements of section 5 of the Securities Act (15 U.S.C. 77e) in exchange for securities excludable under this paragraph (a)(7).

(ii) As a non-exclusive safe harbor under this paragraph (a)(7), a person will be deemed to have received the securities pursuant to an employee compensation plan if such person received the securities pursuant to a compensatory benefit plan in transactions that meet the conditions of § 230.701(c) of this chapter.

* * * * *

■ 10. Amend § 240.12h–3 by revising paragraph (b)(1) to read as follows:

**§ 240.12h–3 Suspension of duty to file reports under section 15(d).**

* * * * *

(b) * * *

(1) Any class of securities, other than any class of asset-backed securities, held of record by:

(i) Fewer than 300 persons;

(ii) Fewer than 500 persons, where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's three most recent fiscal years; or

(iii) In the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); fewer than 1,200 persons; and

* * * * *

By the Commission.

Dated: December 17, 2014.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2014–30136 Filed 12–29–14; 8:45 am]

BILLING CODE 8011–01–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 199

**[DOD–2014–HA–0133]**

**RIN 0720–AB62**

## TRICARE; Revision of Nonparticipating Providers Reimbursement Rate; Removal of Cost Share for Dental Sealants; TRICARE Dental Program

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Defense (DoD) proposes several amendments to the TRICARE Dental Program (TDP) regulation. Specifically, this proposed rule revises the benefit payment provision for nonparticipating providers to more closely mirror industry practices by requiring TDP nonparticipating providers to be reimbursed (minus the appropriate cost-share) at the lesser of billed charges: or the network maximum allowable charge for similar services in that same locality (region) or state. This rule also updates the regulatory provisions regarding dental sealants to clearly categorize them as a preventive service and, consequently, eliminate the current 20 percent cost-share applicable to sealants to conform the language in the regulation to the statute.

**DATES:** Written comments received at the address indicated below by March 2, 2015 will be accepted.

**ADDRESSES:** You may submit comments, identified by docket number and or Regulatory Information Number (RIN) number and title, by any of the following methods:

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

• Mail: Federal Docket Management System Office, 4800 Mark Center Drive, Suite 02G09, Alexandria, VA 22350–3100.

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

**FOR FURTHER INFORMATION CONTACT:** Col Gary C. Martin, Defense Health Agency, telephone (703) 681–0039.

**SUPPLEMENTARY INFORMATION:**

### I. Executive Summary

*1. Purpose of Regulatory Actions*

a. Need for Regulatory Actions

(1) Revision of Nonparticipating Providers' Reimbursement Rate

Prior to 2006, TRICARE Dental Program (TDP) participating and nonparticipating providers were reimbursed at the equivalent of not less than the 50th percentile of prevailing charges made for similar services in the same locality (region) or state, or the provider's actual charge, whichever is lower, less any cost-share amount due for authorized services. This provision was included in the regulation to constitute a significant financial incentive for participation of providers in the contractor's network and to ensure a network of quality providers through use of a higher reimbursement rate. Over time, the Department discovered that this provision placed an unnecessary burden on contractors with already established, high quality provider networks with reimbursement rates below the 50th percentile that were of sufficient size to meet the access requirements of the TDP. Consequently, the Department of Defense published a final rule in the **Federal Register** on January 11, 2006 (71 FR 1695), revising the participating provider's reimbursement rate for the TDP that has resulted in significant cost savings to the TDP enrollees and the Government. Since over 80 percent of all TDP care was provided by network dentists, the need to also change the reimbursement rate for nonparticipating dentists was overlooked and not included in the 2006 rule change. However, over the past eight years this has created an incentive for some network providers to leave the TDP network and for other providers not to become network providers. As the rule is currently written, depending on the geographic location, some non-network providers are actually reimbursed at a higher amount than they would have been had they been a participating provider and receiving the negotiated network rate. Specifically, the revision will require TDP nonparticipating providers to be reimbursed (minus the appropriate cost-share) at the lesser of (1) billed charges:

or (2) the network maximum allowable charge for similar services in that same locality (region) or state. This revision will increase the number of network providers and provide cost savings to enrollees and the Government.

(2) Removal of Cost-Share for Dental Sealants

Sealants are currently separately defined in the TDP regulation at § 199.13(b)(24), and specifically identified as a covered non-preventive service subject to a 20 percent cost-share. The cost share for dental sealants was originally put in place when there was minimal evidence as to the effectiveness of dental sealants preventing tooth decay. The scientific evidence is now overwhelming that dental sealants are effective in preventing tooth decay and the vast majority of commercial dental insurance plans cover this procedure with no cost shares. Further, the American Dental Association's Council on Dental Care Programs Code on Dental Procedures and Nomenclature classifies dental sealants as a preventive procedure. Additionally, the Department currently recognizes sealants as a preventive service under the TRICARE Retiree Dental Program per § 199.22(f)(1)(ii)(C). The proposed regulatory revisions regarding dental sealants will delete the separate definition of dental sealants, specifically include sealants as a category of preventive service under § 199.13(e)(2)(i)(B), delete any possible inconsistency in the definition of preventive service in § 199.13(b)(20) and (e)(2)(i), and update the cost-share table in § 199.13(e)(3)(i) to delete the specific line item reference to sealants being subject to a 20 percent cost-share in order to conform with the requirement in 10 U.S.C. 1076a(e)(1)(A) that TDP enrollees pay no charge for preventive services.

b. Legal Authority for the Regulatory Action

This regulation is proposed under the authority of 10 U.S.C. 1076a which authorizes the Secretary of Defense to establish a voluntary enrollment dental plan for eligible dependents of members of the uniformed services who are on active duty for a period of more than 30 days, members of the Selected Reserve of the Ready Reserve, members of the Individual Ready Reserve, and eligible dependents of members of the Ready Reserve of the reserve components who are not on active duty for more than 30 days.

*2. Summary of Major Provisions of the Regulatory Action*

In this rule, the proposed regulatory language changes nonparticipating provider (*e.g.* non-network or out-of-network) reimbursement at § 199.13(g)(2)(i) to be on an equivalent basis with network reimbursement, in order to serve as an incentive for both providers to participate in the network and for beneficiaries to utilize network providers in order to avoid additional out-of-pocket costs for balance billing. The proposed rule includes several technical revisions for clarification and consistency sake in defining beneficiary liability, nonparticipating provider and participating provider in the context of the TDP. The proposed rule also amends several provisions within § 199.13 to eliminate the separate definition of sealants, specifically include sealants as a covered preventive service, and remove beneficiary cost sharing by covering sealants at 100 percent of allowable charge as authorized by law.

*3. Summary of the Costs and Benefits*

This proposed rule is not anticipated to have an annual effect on the economy of $100 million or more, making it not economically significant and non-major under the Executive Order and the Congressional Review Act. The proposed amendment to transition nonparticipating provider reimbursement to be on an equivalent basis with network reimbursement, will result in (1) a lower allowed-to-billed ratio and a decrease in TDP claim payments, (2) premium decreases for beneficiaries; (3) a corresponding increase in enrollment by eligible beneficiaries as a result of these premium changes; (4) resultant cost savings to the government through reduced premium subsidies; and (5) increased out-of-pocket costs for beneficiaries who opt to use a nonparticipating provider who may balance bill for the difference in contractor payment at the current rates and the new, lower network agreement rates. While the requirements for sealant coverage will not change, the removal of beneficiary cost sharing for sealants will result in (1) a marginal increase in sealant utilization, as we anticipate most beneficiaries requiring sealants are currently receiving these services since they remain a relatively inexpensive procedure and are typically viewed as beneficial; (2) a minimal premium increase for beneficiaries; and (3) an increase in government costs as a result of both the direct effect of the waived cost sharing on current sealant services and the full cost of the additional utilization. We estimate that the net effects of the TDP provisions that would be implemented by this rule would result in a net premium decrease for TDP beneficiaries and corresponding cost savings to the government that do not reach the $100 million threshold to be deemed economically significant.

## II. Background

The TRICARE Dental Program (TDP) allows the Secretary of Defense to offer comprehensive premium based indemnity dental insurance coverage to qualified individuals. The funds used by the TDP are appropriated funds furnished by Congress through annual appropriation acts and funds collected as premium shares from beneficiaries. TDP is delivered through a competitively procured contract awarded by the Director, Defense Health Agency, or designee. TDP enrollees are required to pay all or a portion of the premium cost depending on their status. For those eligible for premium sharing, including active duty dependents and certain Selected Reserve and Individual Reserve members, the portion of premium share to be paid by them is no more than forty (40) percent of the total premium. For those entitled to premium sharing, the Government pays the remaining sixty (60) percent of the premium. Additional information regarding the TDP is available at *www.tricare.mil/tdp.*

The amendments to § 199.13 are being proposed with the understanding that the changes are being considered for incorporation into the next TDP contract. As such, the implementation date for any changes adopted through this rulemaking process is expected to be effective with the start health care delivery date (on or after February 1, 2017) of the next awarded TDP contract.

## III. Explanation for Proposed Provisions

*A. Revision of Nonparticipating Providers Reimbursement Rate*

Currently, § 199.13(g)(2)(i) requires the TRICARE Dental Program (TDP) contractor to reimburse nonparticipating providers at the equivalent of not less than the 50th percentile of prevailing charges made for similar services in the same locality (region) or state, or the provider's actual charge, whichever is lower, less any cost-share amount due for authorized services. The Department of Defense published a final rule in the **Federal Register** on January 11, 2006 (71 FR 1695), revising the participating provider's reimbursement rate for the TDP that has resulted in significant cost savings to the TDP enrollees and the

Government. The reimbursement rates that have been negotiated over the life of the dental contract represent the general market rates for dental insurance reimbursement. Since over 80 percent of all TDP care was provided by network dentists, the need to also change the reimbursement rate for nonparticipating dentists was overlooked at that time and not included in the 2006 rule change. However, over the past eight years this has created an incentive for some network providers to leave the TDP network and for other providers not to become network providers. While the contractor's negotiated rates for network providers are proprietary in nature and vary quite a bit based on geographic location, an examination of the allowed to billed ratio for network versus non-network care demonstrates that the TDP contractor's network delivers considerably lower rates for network care. The revision will require TDP nonparticipating providers to be reimbursed (minus the appropriate cost-share) at the lesser of (1) billed charges: or (2) network maximum allowable charge for similar services in that same locality (region) or state. The network maximum allowable charge is the maximum negotiated fee between the dental contractor and any TDP participating provider for similar services covered by the dental plan in that same locality (region) or state. This reimbursement change would only apply to areas where the network is compliant; there is no proposed change to the exception in § 199.13(g)(2)(i) for non-compliant areas subject to the requirements in § 199.13(e)(3)(ii). We believe this revision is consistent with current industry practice and will bring DoD's TDP reimbursement provisions into line with the broader insurance market, but invite comments on any alternative approaches to better aligning TDP nonparticipating provider reimbursement rates with network negotiated rates and current industry practice. Elimination of the 50th percentile of prevailing charges requirement affords the Government and enrollees significant cost savings through lower provider reimbursement costs by the contractor. These cost savings are passed on in the form of lower premiums for all enrolled beneficiaries. The Department also anticipates the proposed change will increase the number of network providers.

Under this proposed rule, enrollees maintain freedom of choice to see either a participating or nonparticipating provider. Cost shares are established by statute and do not vary between network and non-network care. Beneficiaries will, however, be incentivized to seek care from a participating provider who has agreed to not balance bill the beneficiary any amount in excess of the maximum payment allowed by the dental plan contractor for covered services. For those beneficiaries that elect to seek care from a nonparticipating provider, they may be balance-billed amounts in excess of the dental plan contractor's network maximum allowable charge. As with other commercial dental plans, TDP enrollees and nonparticipating dentists can call the TDP contractor's toll free customer service to inquire as to what the network maximum allowable charge is for their service in a specific locality (region) or state.

This proposed rule also makes several technical amendments to § 199.13(b) and (f) for clarification and consistency sake in defining and discussing beneficiary liability, nonparticipating provider and participating provider in the context of the TDP. With the proposed revision to nonparticipating providers' reimbursement rate, the definition of beneficiary liability that discusses the prevailing fee determination must be revised to reference the network maximum allowable charge. Additionally, revisions are required to clarify that participating providers are participating in the contractor's network as a network provider and are reimbursed in accordance with the contractor's network agreements. Nonparticipating providers are considered non-network, or out-of-network, providers.

*B. Removal of Cost-Share for Dental Sealants*

The cost share for dental sealants was originally put in place when there was minimal evidence as to the effectiveness of dental sealants preventing tooth decay. The scientific evidence is now overwhelming that dental sealants are effective in preventing tooth decay and the vast majority of commercial dental insurance plans cover this procedure with no cost shares. Further, the American Dental Association's Council on Dental Care Programs Code on Dental Procedures and Nomenclature, recognizes dental sealants as a preventive service. Consequently, the Department believes dental sealants should be reclassified as a preventive service under the TDP. In order to do so, this rule proposes to eliminate the separate definition of sealants found at § 199.13(b)(24) in favor of including it as a category of preventive service under § 199.13(e)(2)(i)(B). Finally, as a result of clearly classifying dental sealants as a preventive service, the proposed rule eliminates the current 20 percent cost-share to conform with the requirement in 10 U.S.C. 1076a(e)(1)(A) that TDP enrollees pay no charge for preventive services. As the cost share has prevented some beneficiaries from receiving this needed treatment, we also anticipate the oral health of TDP beneficiaries will improve with the elimination of this cost-share.

## IV. Regulatory Procedures

*Executive Order 12866, ''Regulatory Planning and Review'' and E.O. 13563, ''Improving Regulation and Regulatory Review''*

It has been determined that his proposed rule is not a significant regulatory action. This rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; completion; jobs; the environment; public health or safety; or State, local, or tribunal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Orders.

*Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)*

It has been determined that this proposed rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

*Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)*

It has been certified that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Set forth in this proposed rule are minor revisions to the existing regulation. The DoD does not anticipate a significant impact on the Program.

*Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)*

It has been determined that this proposed rule does not impose reporting

or recordkeeping requirements under the Paperwork Act of 1995.

*Executive Order 13132, Federalism*

It has been determined that this proposed rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

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

Claims, Dental health, Health care, Health insurance, Dental sealants, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

## PART 199—[AMENDED]

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

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

■ 2. Section 199.13 is proposed to be amended by:

■ a. Revising paragraphs (b)(4), (14), (17) and (20).

■ b. Removing paragraph (b)(24).

■ c. Revising paragraph (e)(2)(i).

■ d. Adding new paragraph (e)(2)(i)(B)(*5*).

■ e. Revising the table following paragraph (e)(3)(i) to delete the fourth line item entry entitled ''Sealants.''

■ f. Revising paragraphs (f)(5) and (g)(2)(i).

The revisions and additions read as follows:

**§ 199.13 TRICARE Dental Program.**

* * * * *

(b) * * *

(4) Beneficiary liability. The legal obligation of the beneficiary, his or her estate, or responsible family member to pay for the costs of dental care or treatment received. Specifically, for the purposes of services and supplies covered by the TDP, beneficiary liability including cost-sharing amounts or any amount above the network maximum allowable charge where the provider selected by the beneficiary is not a participating provider or a provider within an approved alternative delivery system. In cases where a nonparticipating provider does not accept assignment of benefits,

* * * * *

(14) Nonparticipating provider. A dentist or dental hygienist that furnished dental services to a TDP beneficiary, but who has not agreed to participate in the contractor's network and accept reimbursement in accordance with the contractor's network agreement. A nonparticipating provider looks to the beneficiary or active duty, Selected Reserve or Individual Ready Reserve member for final responsibility for payment of his or her charge, but may accept payment (assignment of benefits) directly from the insurer or assist the beneficiary in filing the claim for reimbursement by the dental plan contractor. Where the nonparticipating provider does not accept payment directly from the insurer, the insurer pays the beneficiary or active duty, Selected Reserve or Individual Ready Reserve member, not the provider.

* * * * *

(17) Participating provider. A dentist or dental hygienist who has agreed to participate in the contractor's network and accept reimbursement in accordance with the contractor's network agreement as the total charge (even though less than the actual billed amount), including provision for payment to the provider by the beneficiary (or active duty, Selected Reserve or Individual Ready Reserve member) or any cost-share for covered services.

* * * * *

(20) Preventive services. Traditional prophylaxis including scaling deposits from teeth, polishing teeth, and topical application of fluoride to teeth, as well as other dental services authorized in paragraph (e) of this section.

* * * * *

(e) * * *

(2) * * *

(i) Diagnostic and preventive services. Benefits may be extended for those dental services described as oral examination, diagnostic, and preventive services when performed directly by dentists and dental hygienists as authorized under paragraph (f) of this section. These include the following categories of service:

* * * * *

(B) * * *

(*5*) Sealants.

* * * * *

(f) * * *

(5) Participating provider. An authorized provider may elect to participate as a network provider in the dental plan contractor's network and any such election will apply to all TDP beneficiaries. The authorized provider may not participate on a claim-by-claim basis. The participating provider must agree to accept, within one (1) day of a request for appointment, beneficiaries in need of emergency palliative treatment. Payment to the participating provider is based on the methodology specified in paragraph (g)(2)(ii) of this section. The fee or charge determinations are binding upon the provider in accordance with the dental plan contractor's procedures for participation in the network. Payment is made directly to the participating provider, and the participating provider may only charge the beneficiary the applicable percent cost-share of the dental plan contractor's allowable charge for those benefit categories as specified in paragraph (e) of this section, in addition to the full charges for any services not authorized as benefits.

* * * * *

(g) * * *

(2) * * *

(i) Nonparticipating providers (or the Beneficiaries or active duty, Selected Reserve or Individual Ready Reserve members for unassigned claims) shall be reimbursed at the lesser of (1) the provider's actual charge: or (2) the network maximum allowable charge for similar services for that same locality (region) or state, whichever is lower, subject to the exception listed in paragraph (e)(3)(ii) of this section, less any cost-share amount due for authorized services. The network maximum allowable charge is the maximum negotiated fee between the dental contractor and any TDP participating provider for similar services covered by the dental plan in that same locality (region) or state.

* * * * *

Dated: December 22, 2014.

**Aaron Siegel,**

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

[FR Doc. 2014–30322 Filed 12–29–14; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2014–0807]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; Mantua Creek, Paulsboro, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the operating regulation that governs the Conrail railroad bridge over

Mantua Creek at mile marker 1.4 in Paulsboro, NJ. The bridge owner, Conrail, is modifying the operating system which controls the bridge operations. Cameras will be installed and the bridge will be remotely operated from Mt. Laurel, NJ. Train crew will no longer be required to stop and check the waterway for approaching vessel traffic prior to initiating a bridge closure or be responsible to operate the bridge closure equipment located at the bridge site.

**DATES:** Comments and related material must be received by the Coast Guard on or before February 13, 2015.

**ADDRESSES:** You may submit comments identified by docket number USCG–2014–0807 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 instructions on submitting comments. To avoid duplication, please use only one of these methods.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mrs. Kashanda Booker, Fifth Coast Guard District Bridge Administration Division, Coast Guard; telephone 757–398–6227, email *kashanda.l.booker@uscg.mil*. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

## Table of Acronyms

CFR Code of Federal Regulations
Conrail Consolidated Rail Corporation
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code

## A. Public Participation and Request for Comments

We encourage you to participate in this proposed 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 proposed rulemaking (USCG–2014–0807), 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 (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online 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–2014–0807 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 them 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–2014–0807) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*3. Privacy Act*

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

*4. Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one using one of the methods specified under **ADDRESSES**. Please explain why 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. Basis and Purpose

The bridge owner, Conrail, requested a change to 33 CFR § 117.729 (a) due to the replacement of the existing bridge structure. Conrail also requested to modify the operating regulations due to their intent to install sensor equipment as part of the reconstruction efforts for their bridge across Mantua Creek.

The original structure for the bridge at mile marker 1.4 across Mantua Creek was an A-Frame swing bridge with unlimited vertical clearance in the open position. This swing bridge is being replaced by a vertical lift bridge with a 25-foot vertical clearance in the open position. The horizontal clearance for the swing bridge was 32 feet. The vertical lift bridge will have a horizontal clearance of 44 feet. Conrail proposed to install equipment to support remote operation of the bridge.

The proposed regulations will change three aspects of the bridge operation. Specifically, the proposed regulations would enable (1) remote operation of the bridge, (2) installation of cameras and infrared sensors to verify whether any vessels are transiting the waterway before a bridge closure is initiated, and (3) alter the requirement for signals to be used during drawbridge movement operations. This proposed rule will not change the operating schedule of the bridge.

The scope of the waterway inspection is different between the current on-site train crewmember inspection process and the range of the proposed camera installation. There is also a difference in the time it takes between the inspection and the initiation of the bridge closure operations. Currently the regulation requires an on-site train crewmember to conduct an inspection of the waterway

for vessels by stopping the train approximately 150 feet north of the bridge site when approached from the north or 150 feet south of the bridge site when approached from the south. Once the train is stopped, the train crewmember walks to the bridge site and physically looks up and down the channel. The time it takes to stop the train, walk to the bridge, conduct the inspection, walk back to the train, and re-start the train takes 5–10 minutes. The proposed regulation allows the remote operating station to inspect the waterway with cameras without first stopping the train which permits a more efficient operating system.

The closer the vessels are to the bridge, the more likely it is that the train crewmember will see them using the process required by the current regulation. Under the proposed regulations, the camera inspection of the waterway has the capability to zoom up and down stream allowing for easier detection of a smaller vessel approaching the bridge. After inspection of the waterway, using the cameras, the bridge closing operations would then occur from a remote location at the Mt. Laurel remote operating station.

Currently, the bridge is required to be in the open to navigation position between March through November and is designed to be operated by the train crew. Under the proposed regulations Conrail proposes to operate the Mantua Creek Bridge at mile 1.4 from a remote location, the Conrail Mt. Laurel, NJ remote operating station, at all times. A draw tender may be stationed at the bridge at various times when it is deemed necessary for safety purposes such as during times when bridge maintenance is being performed.

Conrail operates other bridges at the Mt. Laurel, NJ remote operating station. The change from on-site control of the bridge to the Mt. Laurel, NJ operating station enables Conrail to consolidate its control of the train line and Mantua Creek bridge. By controlling the track as well as the bridge operating mechanism at the Mt. Laurel station, the remote operator has access to more information regarding the anticipated arrival time for when the trains will be at the bridge site. Information such as train speed and location directly contribute to when the bridge will need to be closed. The proposed change to a remote operating station may shorten the duration of the bridge closures due to the higher accuracy of information on train speed and anticipated arrival time at the bridge site.

The depth of Mantua Creek at the bridge is 22 feet. The diurnal tidal range is 6 feet. Mantua Creek is used by several recreational vessels during the summer boating season. There is no commercial vessel traffic on Mantua Creek.

From March through November, the bridge is in the open to navigation position and will only be lowered for the passage of train and maintenance. Train activity in this location requires the bridge to close to navigation up to eight times a day Monday thru Friday. On Saturday and Sunday, the bridge is closed up to six times each day.

From December through the end of February, the bridge is in the closed to navigation position but will open if 4 hours notice is given.

Conrail also proposes to specify the dates when the bridge will be left in the open to navigation position, March 1 through November 30 and left in the closed to navigation position from December 1 through the last day of February. This represents a clarification of the existing regulatory language, and not a substantive change to the existing bridge schedule.

## C. Discussion of Proposed Rule

Under the proposed regulation, the responsibility to operate the drawbridge is being removed from the train crew and being transferred to the remote operating station located in Mt. Laurel, NJ. The visual examination of the waterway to confirm whether or not any vessels are present will shift from the train crew to the Mt. Laurel remote operating station. The train crew will not be required to stop and check the waterway prior to the remote operating station closing or opening the bridge. A new requirement for the remote operating station is being proposed that uses cameras and sensors to confirm whether any vessels are navigating Mantua Creek near the CONRAIL bridge prior to closing the bridge.

From the controls at the Mt. Laurel remote operating station, the timeframe to initiate the bridge closure is not more than 15 minutes before a train will arrive at the bridge location. At the Mt. Laurel remote operating station, the cameras and sensors will be used continuously during the bridge closure operations to monitor the waterway for the presence of vessels.

With the limit of 25 feet of vertical clearance in the open position, the movement of the bridge impacts vessels transiting the waterway. Signals alerting any vessels on Mantua Creek about this movement are being modified to reflect the operating process of a new vertical lift bridge instead of the removed swing bridge. The bridge will use flashing red lights along with sounding the horn to notify waterway users that the bridge is changing position. The current regulation requires a flashing red light, one prolonged blast, one short blast, and an audio voice announcement to indicate the bridge is opening. The proposed regulation states that the light will change from fixed green to flashing red any time the bridge is not in the full open position. Prior to bridge movement, there will be two prolonged blasts followed by two short blasts. The proposed regulation removes the audio voice announcement.

## D. Regulatory Analyses

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

### *1. Regulatory Planning and Review*

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The changes proposed by this NPRM impact the methods used to operate the drawbridge. There are no changes proposed to the drawbridge operating schedule.

### *2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons. There are no changes proposed to the drawbridge operating schedule. Vessels that can safely transit under the bridge may do so at any time. The vertical clearance of 25 feet is consistent with other approved bridges on Mantua Creek.

If you think that your business, organization, or governmental

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

*3. Assistance for Small Entities*

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

*4. Collection of Information*

This proposed rule would call 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 proposed 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 proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

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

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

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. Revise § 117.729 (a) to read as follows:

**§ 117.729 Mantua Creek.**

(a) The draw of the Conrail automated railroad bridge, mile 1.4, at Paulsboro, NJ shall operate as follows:

(1) The bridge will be operated remotely by the South Jersey Train Dispatcher located in Mt. Laurel, NJ. Operational information will be provided 24 hours a day by telephone at (856) 231–2282.

(2) From March 1 through November 30, the draw shall be left in the open position and will only be lowered for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

(3) From December 1 through the last day of February, the draw will open on signal if at least 4 hours notice is given by telephone at (856) 231–2282.

(4) The timeframe to initiate the bridge closure will be not more than 15 minutes before a train will arrive at the bridge location. If a train, moving toward the bridge has crossed the home signal for the bridge, the train may continue across the bridge and must clear the bridge prior to stopping for any reason. Trains shall be controlled so that any delay in opening of the draw shall not exceed ten minutes except as provided in § 117.31(b).

(5) The bridge will be equipped with cameras and channel sensors to visually

and electronically ensure the waterway is clear before the bridge closes. The video and sensors are located and monitored at the remote operating location in Mt. Laurel, NJ. The channel sensors signal will be a direct input to the bridge control system. In the event of failure or obstruction of the infrared channel sensors, the bridge will automatically stop closing and the South Jersey Train Dispatcher will return the bridge to the open position. In the event of video failure the bridge will remain in the full open position.

(6) The Conrail Railroad center span light will change from fixed green to flashing red anytime the bridge is not in the full open position.

(7) Prior to downward movement of the span, the horn will sound two prolonged blasts, followed by a pause, and then two short blasts until the bridge is seated and locked down. At the time of movement, the center span light will change from fixed green to flashing red and remain flashing until the bridge has returned to its full open position.

(8) When the train controller at Mt. Laurel has verified that rail traffic has cleared, they will sound the horn five times to signal the draw is about to return to its full open position.

(9) During upward movement of the span, the horn will sound two prolonged blasts, followed by a pause, and then sound two short blasts until the bridge is in the full open position. The center span light will continue to flash red until the bridge is in the fully open position.

(10) When the draw cannot be operated from the remote site, a bridge tender must be called to operate the bridge in the traditional manner. Personnel shall be dispatched to arrive at the bridge as soon as possible, but not more than one hour after malfunction or disability of the remote system.

* * * * *

Dated: December 11, 2014.

**Stephen P. Metruck,**

*Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 2014–30451 Filed 12–29–14; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2014–0751]**

**RIN 1625–AA00**

## Safety Zone; Triathlon National Championships, Milwaukee Harbor, Milwaukee, Wisconsin

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a safety zone within Milwaukee Harbor in Milwaukee, Wisconsin. This zone is intended to restrict vessels from a portion of Milwaukee Harbor due to the 2015 Olympic and Sprint Distance National Championships. This proposed safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the 2015 Olympic and Sprint Distance National Championships.

**DATES:** Comments and related material must be received by the Coast Guard on or before January 29, 2015.

**ADDRESSES:** You may submit comments identified by docket number USCG–2014–0751 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email Petty Officer Joseph McCollum, U.S. Coast Guard Sector Lake Michigan; telephone 414–747–7148, email *Joseph.P.McCollum@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

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

### 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–2014–0751), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2014–0751'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change 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–2014–0751 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

*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. You may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**B. Regulatory History and Information**

The Coast Guard established a temporary safety zone in Milwaukee Harbor for the Olympic and Sprint Distance National Championships which were scheduled for August of 2013 and 2014. On May 24, 2013, the Coast Guard published a TFR entitled Safety Zone; USA Triathlon; Milwaukee Harbor, Milwaukee, Wisconsin in the **Federal Register** (78 FR 31415). That final rule published after a notice of proposed rulemaking was submitted for public comment in the **Federal Register** (78 FR 19158).

**C. Basis and Purpose**

The legal basis for the rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 33 CFR 1.05–1, 160.5; Department of Homeland Security Delegation No. 0170.1.

In 2014, the Coast Guard was informed that the Olympic and Sprint Distance National Championships are scheduled to return to Milwaukee Harbor in 2015. Within and around Milwaukee Harbor at Lakeshore inlet, this event is expected to involve thousands of participants competing in a swim race surrounded by thousands of spectators. The swim portion of this event is anticipated to occur on three days during the second week of August, 2015. The Captain of the Port Lake Michigan has determined that the likelihood of transiting watercraft during the swim competition involving a large number of competitors presents a significant risk of serious injuries or fatalities.

**D. Discussion of Proposed Rule**

The Captain of the Port Lake Michigan has determined that a safety zone is necessary to mitigate the aforementioned safety risks. Thus, this proposed rule establishes a safety zone that encompasses all waters of Milwaukee Harbor, including Lakeshore inlet and the Marina at Pier Wisconsin, west of an imaginary line across the entrance to the Marina at Pier Wisconsin connecting coordinates 43°02.253′ N, 087°53.623′ W and 43°01.737′ N, 087°53.727′ W (NAD 83).

This proposed rule will be effective from August 1, 2015, until August 30, 2015. Additionally, the Coast Guard anticipates that this safety zone will be enforced from 10:30 a.m. until 2:30 p.m. on August 7; from 6:30 a.m. until 4:30 p.m. on August 8, and from 6:30 a.m. until 11:30 a.m. on August 9, 2015. This 2015 enforcement schedule may change, and in the event of a change, the Captain of the Port Lake Michigan will issue a Notice of Enforcement with an updated enforcement schedule.

The Captain of the Port Lake Michigan will notify the public that the zone in this proposal is or will be enforced by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners.

All persons and vessels shall comply with the instructions of the Captain of the Port Lake Michigan or her designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or her designated on-scene representative. The Captain of the Port Lake Michigan or her designated on-scene representative may be contacted via VHF Channel 16.

**E. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. Overall, we expect the economic impact of this proposed rule to be minimal and that a full Regulatory Evaluation is unnecessary.

*2. Impact on Small Entities*

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor within the waters of the marina at Pier Wisconsin or Lakeshore inlet during the times in which the safety zone is enforced in August of 2015.

This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule will be enforced for a limited time during the month of August; this proposed safety zone has been designed to allow traffic to pass safely around the zone whenever possible, and vessels

will be allowed to pass through the zone with the permission of the Captain of the Port. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7148. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*4. Collection of Information*

This proposed rule would call 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 proposed 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 proposed rule would not result in such expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children From Environmental Health Risks*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a safety zone and is therefore categorically excluded under figure 2–1, paragraph 34(g) of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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

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

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

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

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

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

■ 2. Add § 165.T09–0751 to read as follows:

**§ 165.T09–0751 Safety Zone; Triathlon National Championships, Milwaukee Harbor, Milwaukee, Wisconsin.**

(a) *Location.* The safety zone will encompass all waters of Milwaukee Harbor, including Lakeshore inlet and the marina at Pier Wisconsin, west of an imaginary line across the entrance to the Marina at Pier Wisconsin connecting coordinates 43°02.253′ N, 087°53.623′ W and 43°01.737′ N, 087°53.727′ W (NAD 83).

(b) *Effective Period.* This safety zone is effective from August 1, 2015, until August 30, 2015. The Coast Guard anticipates that this safety zone will be enforced from 10:30 a.m. until 2:30 p.m. on August 7; from 6:30 a.m. until 4:30 p.m. on August 8, and from 6:30 a.m. until 11:30 a.m. on August 9, 2015. This 2015 enforcement schedule may change, and in the event of a change, the Captain of the Port Lake Michigan will

issue a Notice of Enforcement with an updated enforcement schedule.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring in this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or her designated on-scene representative.

(2) This safety zone is closed to all vessel traffic except as permitted by the Captain of the Port Lake Michigan or her designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Lake Michigan is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Lake Michigan to act on her behalf. The Captain of the Port Lake Michigan or her designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or her designated on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or her on-scene representative.

Dated: December 3, 2014.

**A.B. Cocanour,**

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

[FR Doc. 2014–30491 Filed 12–29–14; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R10–OAR–2013–0005; FRL–9920–97–Region 10]**

## Approval and Promulgation of Implementation Plans; Klamath Falls, Oregon Nonattainment Area; Fine Particulate Matter Emissions Inventory and SIP Strengthening Measures

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

**ACTION:** Proposed rule.

**SUMMARY:** The Oregon Department of Environmental Quality (ODEQ) submitted a revision to the State Implementation Plan (SIP), dated December 14, 2012, to address Clean Air Act (CAA or the Act) requirements for the Klamath Falls, Oregon nonattainment area for the 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). The EPA proposes to approve the emissions inventory contained in the ODEQ's submittal as meeting the requirement to submit a comprehensive, accurate, and current inventory of direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions in Klamath Falls, Oregon. The EPA also proposes to approve $PM_{2.5}$ control measures contained in the December 2012 submittal because incorporation of these measures will strengthen the Oregon SIP and reduce sources of $PM_{2.5}$ emissions in the Klamath Falls, Oregon nonattainment area (Klamath Falls NAA) that contribute to violations of the 2006 $PM_{2.5}$ NAAQS.

**DATES:** Comments must be received on or before January 29, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R10–OAR–2013–0005, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: R10-Public_Comments@epa.gov.*
- *Mail:* Justin A. Spenillo, EPA Region 10, Office of Air, Waste and Toxics (AWT–150), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Justin A. Spenillo, Office of Air, Waste and Toxics, AWT–150. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information

*Instructions:* Direct your comments to Docket ID No. EPA–R10–OAR–2013–0005. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

**FOR FURTHER INFORMATION CONTACT:** Justin A. Spenillo at (206) 553–6125, *spenillo.justin@epa.gov,* or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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## I. Background

### *A. $PM_{2.5}$ National Ambient Air Quality Standards*

Under section 109 of the CAA, the EPA establishes NAAQS for certain pervasive air pollutants (referred to as ''criteria pollutants'') and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. After a new NAAQS is established or an existing NAAQS is revised, all areas across the country are evaluated to determine whether they meet the new or revised standard, and

area designations are promulgated based on that evaluation.

On July 18, 1997, the EPA revised the NAAQS for particulate matter to add new standards for fine particles, using $PM_{2.5}$ (particles less than or equal to 2.5 micrometers in aerodynamic diameter) as the indicator for the pollutant. The EPA established primary and secondary [1] annual and 24-hour standards for $PM_{2.5}$ (62 FR 38652). The annual standard was set at 15.0 micrograms per cubic meter (μg/m³), based on a 3-year average of the annual mean $PM_{2.5}$ concentrations, and the 24-hour standard was set at 65 μg/m³, based on the 3-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations. On October 17, 2006, the EPA revised the level of the 24-hour $PM_{2.5}$ NAAQS to 35 μg/m³, based on a 3-year average of the 98th percentile of 24-hour concentrations (71 FR 61144). On December 14, 2012, the EPA revised the primary annual $PM_{2.5}$ NAAQS to provide increased protection of public health and welfare from fine particle pollution (78 FR 3086, January 15, 2013). In that action, the EPA revised the primary annual $PM_{2.5}$ standard, strengthening it from 15.0 micrograms per cubic meter (μg/m³) to 12.0 μg/m³, which is attained when the 3-year average of the annual arithmetic means does not exceed 12.0 μg/m³.

### *B. Designation of $PM_{2.5}$ Nonattainment Areas*

Effective December 14, 2009, the EPA established the initial air quality designations for most areas in the United States for the 2006 24-hour $PM_{2.5}$ NAAQS (74 FR 58688, November 13, 2009). The Klamath Falls area was designated nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS. The boundaries for this area are described in 40 CFR 81.338.

### *C. Submittal Requirements for $PM_{2.5}$ Nonattainment Areas*

In March 2012, the EPA issued guidance to states for implementation of the 2006 $PM_{2.5}$ NAAQS (March 2012 Implementation Guidance).[2] The guidance recommended that states make submissions for the 2006 $PM_{2.5}$ NAAQS consistent with the substantive requirements developed for implementation of the 1997 $PM_{2.5}$ NAAQS at 40 CFR part 51, subpart Z (*Provisions for Implementation of $PM_{2.5}$ National Ambient Air Quality Standards,* 40 CFR 51.1000, *et seq.*). In December 2012, based on the March 2012 Implementation Guidance, the ODEQ submitted a SIP revision intended to address the nonattainment planning requirements for the Klamath Falls NAA.

On January 4, 2013, the Court of Appeals for the District of Columbia remanded to the EPA the *Clean Air Fine Particle Implementation Rule* (72 FR 20586, Apr. 25, 2007) (hereafter referred to as the ''$PM_{2.5}$ implementation rule'') which formed the basis of the 40 CFR part 51, subpart Z nonattainment planning requirements. *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013). The Court concluded that the EPA had improperly based the $PM_{2.5}$ implementation rule solely upon the requirements of part D, subpart 1 of the CAA, and had failed to address the requirements of part D, subpart 4. As a result of the Court's remand of the $PM_{2.5}$ implementation rule, the EPA withdrew its March 2012 Implementation Guidance because it was based largely on the remanded rule promulgated to implement the 1997 $PM_{2.5}$ NAAQS.[3] The EPA is currently engaged in rulemaking to address the Court's remand of the $PM_{2.5}$ implementation rule. In the interim, however, the EPA continues to take action on SIP submissions from states intended to address nonattainment planning requirements for the 2006 $PM_{2.5}$ NAAQS, consistent with the CAA.

This action is limited to proposing approval of the emissions inventory of direct $PM_{2.5}$ and $PM_{2.5}$ precursors submitted by the ODEQ for the Klamath Falls NAA as required under section 172(c)(3) of the CAA, and the approval of specific control measures that are expected to strengthen the SIP. These control measures independently meet requirements for control measures in attainment plans and the emissions reductions they achieve will contribute to attainment of the 2006 $PM_{2.5}$ NAAQS in the Klamath Falls NAA.

## II. Analysis of the State's Submittal

### *A. Emissions Inventory*

The EPA promulgated emissions inventory requirements for the 1997 $PM_{2.5}$ NAAQS as part of the $PM_{2.5}$ implementation rule at 40 CFR 51.1008. The decision in *NRDC* v. *EPA* remanded the $PM_{2.5}$ implementation rule because it did not incorporate the specific particulate matter requirements of subpart 4, part D, title I. The emission inventory requirements set forth in the $PM_{2.5}$ implementation rule were based on the CAA section 172(c)(3) requirements in subpart 1. Subpart 4 contains no specific provision governing emissions inventories for $PM_{10}$ or $PM_{2.5}$ nonattainment areas that supersedes the general emissions inventory requirement for all nonattainment areas in section 172(c)(3). *See* ''*State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,*'' (57 FR 13498, 13539, April 16, 1992) (hereinafter ''General Preamble''). Accordingly, the EPA is evaluating the ODEQ's emissions inventory for the Klamath Falls NAA pursuant to the CAA requirements in section 172(c)(3).

Section 172(c)(3) of the CAA requires a state with an area designated as nonattainment to submit to the EPA for approval a comprehensive, accurate, and current inventory of actual emissions of the pollutant at issue, including emissions of any precursor of that pollutant, for the nonattainment area. These inventories provide a detailed accounting of all emissions and emissions sources by pollutant and precursor pollutant within the nonattainment area. In addition, inventories are used to model air quality to demonstrate attainment of the 2006 $PM_{2.5}$ NAAQS as expeditiously as practicable. The EPA reviewed, in accordance with the August 2005 EPA guidance, ''*Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations,*'' the procedures and methodologies used by the ODEQ to develop the emission inventory for the 2008 base year emissions inventory for the Klamath Falls NAA. In accordance with section 172(c)(3) and consistent with EPA guidance, Oregon's attainment plan as described below includes a comprehensive, accurate, and current inventory of emissions of all direct $PM_{2.5}$ and $PM_{2.5}$ precursors in the Klamath Falls NAA.

To develop an emissions inventory that matches the conditions under which the design value concentration are measured, the ODEQ emissions inventory addresses annual emissions, typical season day emissions, and worst case day emissions. Annual emissions, measured in tons per year (''tpy''), are the total amount of emissions over the course of a calendar year. The typical season day and worst-case day

[1] For a given air pollutant, ''primary'' national ambient air quality standards are those determined by the EPA as requisite to protect the public health, and ''secondary'' standards are those determined by the EPA as requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. See CAA section 109(b).

[2] Memorandum from Stephen D. Page, Implementation Guidance for the 2006 24-Hour Fine Particulate ($PM_{2.5}$) National Ambient Air Quality Standards (Mar. 2, 2012).

[3] Memorandum from Stephen D. Page, Withdrawal of Implementation Guidance for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (Jun. 6, 2013).

emissions are measured in pounds (lbs) per day and are calculated for the PM season, which is the four-month period between November and February when ambient PM concentrations from anthropogenic sources are generally the highest. Typical season day emissions are the average emissions over the four-month PM season, and worst case day emissions are the amount emitted on winter days with a diurnal temperature range representative of $PM_{2.5}$ exceedances. Most source categories are modeled using the typical season day emissions. Worst-case day emissions are better suited for select sources, such as residential wood combustion and motor vehicles, with emissions highly dependent on temperature. At colder temperatures there is a behavioral increase in home heating using woodstoves, and vehicle emissions associated with start-up emissions are higher on colder days.

The year 2008 was selected by ODEQ as the base year for the emissions inventory because it was the most recent year that Oregon completed the NEI data submittal prior to the designation of the Klamath Falls NAA in 2009. The selection of 2008 as the baseline year for the emissions inventory is consistent with the emissions inventory requirement in section 172(c)(3) because it provides an inventory of emissions for one of the years relied upon for the nonattainment designation. The ODEQ's 2008 base year emissions inventory includes emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors that cover the general source categories of stationary point sources, stationary nonpoint sources (area sources), non-road mobile sources, and on-road mobile sources. The main sources of emissions in the Klamath Falls NAA are residential wood combustion, mobile and non-road sources, and point sources. The pollutants that comprise the 2008 base year inventory include direct $PM_{2.5}$ and the precursors to the formation of $PM_{2.5}$ which are nitrogen oxide ($NO_X$), volatile organic compounds (VOCs), ammonia ($NH_3$), and sulfur dioxide ($SO_2$).

The point source inventory provides facility-specific data for point source emissions from Klamath Falls' permitted stationary sources. Permitted point sources include industrial sources, non-industrial sources, gas stations, crematories, and portable sources. The emissions inventory includes actual point source emissions for both the annual and the seasonal inventory. For purposes of the worst-case day emission inventory, the emissions for permitted point sources are reported at 80% of the permitted operating capacity because such specific daily actual emissions are not available for permitted point sources in the same manner as annual and typical season emissions. The EPA agrees that 80% of permitted emissions is a conservative estimate for worst-case day actual emissions and, given that permitted point sources were not found to be significantly contributing to the monitored violations. This will be further discussed in a future notice when the EPA acts on the ODEQ's control strategy for the Klamath Falls NAA.

The complete inventory, located in the docket for this rulemaking, also includes a description of minor non-permitted point sources. Area sources for the Klamath Falls NAA are divided into six groups: Waste disposal, treatment and recovery; small stationary fossil fuel combustion; residential wood combustion; fugitive dust; evaporative/off-gassing emissions sources; and miscellaneous area sources. The on-road mobile source emissions inventory includes all sources of mobile exhaust, brake, and tire emissions generated by passenger vehicles, trucks, miscellaneous vehicles, and re-entrained road dust. Non-road mobile sources inventoried include aircraft, gasoline and diesel-powered vehicles and equipment, recreational marine vessels, and trains.

The ODEQ compiled the emissions inventory relying on information from a variety of sources. Permitted point source emissions data were taken from the ODEQ Tracking Reporting and Administration of Air Contaminant Sources (TRAACS) database which is submitted to the EPA National Emissions Inventory System. Many area source emissions were taken from the 2008 EPA National Emissions Inventory (NEI) v.1.5. The ODEQ Area Mobile Emissions Estimates (AMEE) database was also a source of emissions data for mobile emissions. Additional emissions information was taken from a 2007/2008 residential wood combustion survey and from use of the EPA Motor Vehicle Emission Simulator (MOVES). All remaining emissions were modeled or inventoried specifically for this attainment plan. The full emissions inventory submitted by the ODEQ and a detailed description of the methodology used to compile the inventory is presented in Attachment 3.3l of the SIP submittal included in the docket for this action.

Table 1 summarizes the annual emissions for Klamath Falls in 2008 and Table 2 summarizes the worst-case day emissions for Klamath Falls in 2008. Typical season day emissions information can be found in Attachment 3.3l of the SIP submittal included in the docket for this action.

TABLE 1—2008 KLAMATH FALLS, ANNUAL EMISSIONS

[tpy]

| Source sector | $PM_{2.5}$ | $SO_X$ | $NO_X$ | $NH_3$ | VOC |
|---|---|---|---|---|---|
| Point | 143.4 | 47.8 | 329.3 | 70.4 | 997.2 |
| Area | 403.0 | 49.1 | 114.3 | 161.9 | 972.9 |
| Onroad | 92.2 | 6.4 | 1,431.6 | 11.4 | 694.2 |
| Nonroad | 16.1 | 6.6 | 360.9 | ..... | 246.0 |
| Total | 654.7 | 109.9 | 2,236.1 | 243.7 | 2,910.4 |

TABLE 2—2008 KLAMATH FALLS, WORST-CASE DAY

[lbs/day]

| Source sector | $PM_{2.5}$ | $SO_X$ | $NO_X$ | $NH_3$ | VOC |
|---|---|---|---|---|---|
| Point | 1,517 | 357 | 3,247 | 1,453 | 10,301 |
| Area | 2,851 | 546 | 1,391 | 772 | 6,483 |
| Onroad | 917 | 36 | 7,990 | 62 | 4,734 |

TABLE 2—2008 KLAMATH FALLS, WORST-CASE DAY—Continued

[lbs/day]

| Source sector | $PM_{2.5}$ | $SO_X$ | $NO_X$ | $NH_3$ | VOC |
|---|---|---|---|---|---|
| Nonroad | 135 | 108 | 2,855 | | 876 |
| Total | 5,420 | 1,046 | 15,483 | 2,287 | 22,754 |

The EPA reviewed the results, procedures and methodologies for the 2008 base year emissions inventory in accordance with the EPA's current guidance, ''*Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations*'' (August 2005). The ODEQ used standard procedures to develop the emissions inventory and appropriately used seasonal and worst-case day emissions inventories to represent episodic meteorological conditions when $PM_{2.5}$ levels are of the greatest concern. For this reason, the EPA is proposing approval of Klamath Falls' 2008 base year emissions inventory as meeting the requirements of section 172(c)(3) of the CAA.

*B. Description of the Klamath County $PM_{2.5}$ Control Measures*

On December 12, 2012, the ODEQ submitted to the EPA for approval revisions to a number of rules related to the Klamath Falls NAA. These revisions consist of updates to identify the Klamath Falls NAA and to adopt local and state measures to ensure permanent and enforceable control strategies intended to bring the area back into attainment through control of $PM_{2.5}$ and its precursors. Specifically, the ODEQ revised rules in Oregon Administrative Rules (OAR) Chapter 340, Divisions 200, 204, 225, 240, 262, and 264. These revisions, and the EPA's proposed actions on them, are described below.

Division 204: Designation of Air Quality Areas

The ODEQ revised OAR Chapter 340, Division 204 to include a description of the Klamath Falls $PM_{2.5}$ NAA boundary. The EPA proposes to approve and incorporate by reference (IBR) this revision into the SIP because the area description is essential for delineating the nonattainment area, and we believe the area description is consistent with the EPA description in the designation for the area.

Division 225: Air Quality Analysis Requirements

The ODEQ revised OAR 340–225–0090, in conjunction with promulgating OAR 340–240–0550, as encouragement for direct $PM_{10}$ and $PM_{2.5}$ emissions reductions from residential wood-fired devices as a means to offset, in an equal or greater amount, emissions increases from new major sources or major modifications to major sources located in the Klamath Falls NAA, provided such sources do not cause or contribute to a violation of the NAAQS. The revisions to OAR 340–225–0090 exempt a source which proposes to use qualifying woodstove offsets from the need to conduct an air dispersion modeling analysis to demonstrate a net air quality benefit as would otherwise be required. Woodstove emissions are the primary source of $PM_{2.5}$ emissions contributing to NAAQS violations in the NAA and reductions in woodstove emissions would presumptively result in a net air quality benefit when used to offset new emissions from a stationary source located within the NAA. A source proposing to use other sources of emission offsets, or woodstove offsets that don't meet the requirements of OAR 340–240–0550, would still need to conduct a dispersion modeling analysis to demonstrate a net air quality benefit. The revisions are designed to maintain and promote continued air quality improvement while allowing for economic growth that does not negatively affect the airshed.

In a letter dated September 15, 2014, Oregon withdrew the submitted SIP revision for OAR 340–225–0090(2)(a)(C). Accordingly, the EPA is not acting on the revisions to OAR 340–225–0090(2)(a)(C) which establish inter-pollutant offset ratios. Oregon may submit a revision in the future establishing inter-pollutant offset ratios supported by an appropriate demonstration, or alternatively revise these ratios in accordance with the July 21, 2011, EPA memorandum that addresses the Federal inter-pollutant offset policy (76 FR 80747). The EPA proposes to approve and IBR the revisions to OAR 340–225–0090, except for OAR 340–225–0090(2)(a)(C), and the revision to 340–225–0090(2)(a)(B) based on the $PM_{2.5}$ inter-pollutant offset ratio, as it provides equivalent protection of the NAAQS and encourages improved air quality by reducing direct PM emissions from wood fired devices in the Klamath Falls NAA.

Division 240: Rules for Areas With Unique Air Quality Needs

Revisions to OAR 340–240–0110, 340–240–0030, 340–240–0500, 340–240–0510, 340–240–0520, 340–240–0530, 340–240–0540, 340–240–0550, 340–240–0560, describe and allow for the implementation of multiple control measures associated with emissions of $PM_{2.5}$ in the Klamath Falls NAA. The ODEQ updated the rule definitions to include necessary cross-references to applicable rules and to add new definitions needed for implementation of the control measures. Control measures include opacity standards, fugitive emissions control, operation and maintenance plan requirements, industrial source compliance schedules, and residential wood fuel-fired device offset requirements for new sources, and $PM_{2.5}$ and $PM_{10}$ offsets.

The 20% opacity standard and fugitive emissions control rules limit emissions being emitted into the Klamath Falls NAA from stationary sources including industrial facilities. The operation and maintenance plan requirements and the industrial source compliance schedule (a schedule to develop and implement a plan for compliance with the opacity standards, fugitive emissions requirements, and operations and maintenance plans listed in OAR 340–240–0510 through –0540), support reduced particulate matter emissions through enhanced management of source operation. The offsets rules in OAR 340–240–0550, in coordination with the rule revisions in OAR Chapter 340, Division 225, allow for offsets to be obtained within the Klamath Falls NAA from residential wood combustion at a ratio of one ton of $PM_{2.5}$ emissions to one ton of woodstove emissions reductions while ensuring that the increased emissions from new or modified sources will not cause or contribute to a violation of the NAAQS. The EPA proposes to approve these rules as they are permanent and enforceable SIP strengthening measures that contribute to progress toward attainment of the 2006 $PM_{2.5}$ 24-hr NAAQS in this area.

Division 264: Rules for Open Burning

The revisions to OAR Chapter 340, Division 264 enhance the open burning rule in Oregon and the Klamath Falls NAA. Specifically, the revised rule includes language aligning open burning with ideal dispersion conditions; provides a description and map of the Klamath Basin Open Burning Control Area; and provides rules specific to the Klamath Falls NAA prohibiting open burning from industrial, commercial, construction and demolition operations. The rule revisions will reduce emissions through the prohibition of open burning within the Klamath Falls NAA. The EPA proposes to approve and IBR these rule revisions because they are permanent and enforceable measures that support attainment and maintenance of the NAAQS by reducing the amount of particulate matter in the area.

Klamath County Clean Air Ordinances

In its December 12, 2012 submittal, the ODEQ included as control measures the 2007 and 2012 Klamath County Clean Air Ordinances. These two ordinances establish permanent and enforceable control measures on sources that account for the majority of $PM_{2.5}$ emissions in the Klamath Falls NAA. The 2007 Klamath County Clean Air Ordinance is more specifically identified as Chapter 406, Ordinance No. 63.05, enacted August 7, 2007 (2007 Ordinance). The 2012 Klamath County Clean Air Ordinance is more specifically identified as Chapter 406, Ordinance No. 63.06, enacted December 31, 2012 (2012 Ordinance).

The 2007 and 2012 Ordinances were enacted to control emissions from home heating devices for the purpose of meeting the 2006 $PM_{2.5}$ 24-hr NAAQS. The 2007 ordinance provides for lower thresholds for yellow and red air quality advisory days which require the curtailment of wood burning and therefore reduce emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors. With these lower thresholds, wood burning restrictions would be in place on days that most likely contribute to a 24-hour NAAQS violation. This provision, in conjunction with increased enforcement at the County level, is expected to be a core part of the area's attainment plan. The 2007 ordinance has provisions identical to the state wide Heat Smart Program that require removal of uncertified stoves upon sale of a home, and also provisions that reduce the number of available residential open burning days and prohibit the use of burn barrels. The 2012 ordinance required new and retrofit fireplaces to meet lower emissions standards.

The EPA proposes to approve and IBR the 2007 and 2012 Klamath Falls Clean Air Ordinances because they support attainment and maintenance of the NAAQS in the Klamath Falls NAA.

## III. Proposed Action

The EPA proposes to approve the $PM_{2.5}$ and $PM_{2.5}$ precursor emissions inventory for the Klamath Falls NAA, submitted by ODEQ on December 12, 2012, as meeting the emissions inventory requirements of section 172(c)(3) of the CAA for 2006 $PM_{2.5}$ 24-hr NAAQS nonattainment area planning. The EPA also proposes to approve and incorporate into the SIP the specific control measures submitted by the ODEQ on December 12, 2012, to the extent set forth in this notice. These control measures are described in this action and are included in the docket for this proposed action. If approved, these specific control measures would become part of the Oregon SIP. The EPA is not taking action on certain aspects of the revisions submitted by the ODEQ. The EPA expects to take action on the remaining SIP revisions and any additional revisions that may be submitted by the ODEQ in the future.

## IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely 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 proposed action:

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

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

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: December 3, 2014.

**Dennis J. McLerran,**

*Regional Administrator, Region 10.*

[FR Doc. 2014–30498 Filed 12–29–14; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Office of Inspector General

## 42 CFR Part 1001

## Solicitation of New Safe Harbors and Special Fraud Alerts

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice of intent to develop regulations.

**SUMMARY:** In accordance with section 205 of the Health Insurance Portability

and Accountability Act of 1996 (HIPAA), this annual notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal anti-kickback statute (section 1128B(b) of the Social Security Act), as well as developing new OIG Special Fraud Alerts.

**DATES:** To ensure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on March 2, 2015.

**ADDRESSES:** In commenting, please refer to file code OIG–123–N. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific recommendations and proposals through the Federal eRulemaking Portal at *http://www.regulations.gov.*

2. *By regular, express, or overnight mail.* You may send written comments to the following address: Patrice Drew, Office of Inspector General, Regulatory Affairs, Department of Health and Human Services, Attention: OIG–123–N, Room 5541C, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver, by hand or courier, your written comments before the close of the comment period to Patrice Drew, Office of Inspector General, Department of Health and Human Services, Cohen Building, Room 5541C, 330 Independence Avenue SW., Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 619–1368.

For information on viewing public comments, please see the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Patrice Drew, Congressional and Regulatory Affairs Liaison, Office of Inspector General, (202) 619–1368.

**SUPPLEMENTARY INFORMATION:**

*Submitting Comments:* We welcome comments from the public on recommendations for developing new or revised safe harbors and Special Fraud Alerts. Please assist us by referencing the file code OIG–123–N.

*Inspection of Public Comments:* All comments received before the end of the comment period are available for viewing by the public. All comments will be posted on *http://www.regulations.gov* after the closing of the comment period. Comments received timely will also be available for public inspection as they are received at Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201, Monday through Friday from 9:30 a.m. to 5 p.m. To schedule an appointment to view public comments, phone (202) 619–1368.

## I. Background

### *A. OIG Safe Harbor Provisions*

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration to induce or reward business reimbursable under the Federal health care programs. The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to 5 years. OIG may also impose civil money penalties, in accordance with section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a(a)(7)), or exclusion from the Federal health care programs, in accordance with section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)).

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements may be subject to criminal prosecution or administrative sanction. In response to the above concern, section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, P.L. No. 100–93, section 14, the Act, section 1128B(b), 42 U.S.C. 1320a–7b(b), specifically required the development and promulgation of regulations, the so-called ''safe harbor'' provisions, specifying various payment and business practices that, although potentially capable of inducing referrals of business reimbursable under the Federal health care programs, would not be treated as criminal offenses under the anti-kickback statute and would not serve as a basis for administrative sanctions. OIG safe harbor provisions have been developed ''to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements'' (56 FR 35952, July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices will not be subject to liability under the anti-kickback statute or related administrative authorities. The OIG safe harbor regulations are found at 42 CFR part 1001.

### *B. OIG Special Fraud Alerts*

OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices OIG finds potentially fraudulent or abusive. The Special Fraud Alerts encourage industry compliance by giving providers guidance that can be applied to their own practices. OIG Special Fraud Alerts are intended for extensive distribution directly to the health care provider community, as well as to those charged with administering the Federal health care programs.

In developing Special Fraud Alerts, OIG has relied on a number of sources and has consulted directly with experts in the subject field, including those within OIG, other agencies of the Department, other Federal and State agencies, and those in the health care industry.

### *C. Section 205 of the Health Insurance Portability and Accountability Act of 1996*

Section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, section 205, the Act, section 1128D, 42 U.S.C. 1320a-7d, requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for modifying existing safe harbors to the anti-kickback statute and for developing new safe harbors and Special Fraud Alerts.

In developing safe harbors for a criminal statute, OIG is required to thoroughly review the range of factual circumstances that may fall within the proposed safe harbor subject area so as to uncover potential opportunities for fraud and abuse. Only then can OIG determine, in consultation with the Department of Justice, whether it can effectively develop regulatory limitations and controls that will permit beneficial and innocuous arrangements within a subject area while, at the same time, protecting the Federal health care programs and their beneficiaries from abusive practices.

## II. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of HIPAA, OIG last published a **Federal Register** solicitation notice for developing new safe harbors and Special Fraud Alerts on

December 27, 2013 (78 FR 78807). As required under section 205, a status report of the public comments related to safe harbors received in response to that notice is set forth in Appendix F of OIG's Fall 2014 Semiannual Report.[1] OIG is not seeking additional public comment on the proposals listed in Appendix F at this time. Rather, this notice seeks additional recommendations regarding the development of new or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized in Appendix F.

A detailed explanation of justifications for, or empirical data supporting, a suggestion for a safe harbor or Special Fraud Alert would be helpful and should, if possible, be included in any response to this solicitation.

*A. Criteria for Modifying and Establishing Safe Harbor Provisions*

In accordance with section 205 of HIPAA, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would affect an increase or decrease in:

- Access to health care services,
- the quality of health care services,
- patient freedom of choice among health care providers,
- competition among health care providers,
- the cost to Federal health care programs,
- the potential overutilization of health care services, and
- the ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will also consider other factors, including, for example, the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may take into account their decisions whether to (1) order a health care item or service or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

*B. Criteria for Developing Special Fraud Alerts*

In determining whether to issue additional Special Fraud Alerts, we will consider whether, and to what extent, the practices that would be identified in a new Special Fraud Alert may result in any of the consequences set forth above, as well as the volume and frequency of the conduct that would be identified in the Special Fraud Alert.

Dated: December 18, 2014.

**Daniel R. Levinson,**

*Inspector General.*

[FR Doc. 2014–30156 Filed 12–29–14; 8:45 am]

**BILLING CODE 4152–01–P**

[1] The OIG *Semiannual Report to Congress* can be accessed through the OIG Web site at *http://oig.hhs.gov/publications/semiannual.asp.*

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 6

**[FAR Case 2014–020; Docket No. 2014–0020; Sequence No. 1]**

**RIN 9000–AM86**

### Federal Acquisition Regulation; Clarification on Justification for Urgent Noncompetitive Awards Exceeding One Year

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to clarify that a determination of exceptional circumstances is needed when a noncompetitive contract awarded on the basis of unusual and compelling urgency exceeds one year, either at time of award or due to post-award modifications.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before March 2, 2015 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2014–020 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2014–020''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2014–020''. Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2014–020'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAR Case 2014–020, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2014–020.

**SUPPLEMENTARY INFORMATION:**

### I. Background

DoD, GSA, and NASA are revising the FAR in response to a Government Accountability Office (GAO) report, GAO–14–304, Federal Contracting: *Noncompetitive Contracts Based on Urgency Need Additional Oversight,* dated March 2014. On October 14, 2009, the FAR was amended to implement section 862 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 (Pub. L. 110–417) which restricted the length of contracts awarded noncompetitively under unusual and compelling urgency circumstances. Such contracts may not exceed one year unless the head of the executive agency determines that exceptional circumstances apply.

GAO found that agencies did not make the required determination for the ten contracts in GAO's sample that had a period of performance of more than one year. As a result, GAO recommended that DoD, U.S. Department of State and U.S. Agency for International Development provide guidance to improve data reliability and oversight for contracts awarded using the urgency exception.

Additionally, GAO recommended that the Director of the Office of Management and Budget, through the Office of Federal Procurement Policy, provide guidance to clarify when determinations of exceptional circumstances are needed when a noncompetitive contract awarded on the basis of unusual and compelling urgency exceeds one year, either at the time of award or because it was modified after contract award.

This rule clarifies that a determination of exceptional circumstances is needed whenever the period of performance of a noncompetitive contract awarded on the basis of unusual and compelling urgency is extended beyond a year.

## II. 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.

## III. Regulatory Flexibility Act

DoD, GSA, and NASA do 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 only clarifies when determination of exceptional circumstances is needed. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

The purpose of this rule is to clarify that a determination of exceptional circumstances is needed when the period of performance, inclusive of options and modifications, of a noncompetitive contract awarded on the basis of unusual and compelling urgency is greater than one year. This rule only impacts the internal procedures of the Federal government.

There are no recordkeeping, reporting, or other compliance requirements associated with the proposed rule. The rule does not duplicate, overlap, or conflict with any other Federal rules.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2014–020), in correspondence.

## IV. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## List of Subject in 48 CFR Part 6

Government procurement.

Dated: December 22, 2014.

**William Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 6 as set forth below:

## PART 6—COMPETITION REQUIREMENTS

■ 1. The authority citation for 48 CFR part 6 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 6.302–2 by—

■ a. Revising paragraph (d)(1)(ii);

■ b. Redesignating paragraphs (d)(2) through (d)(4) as paragraphs (d)(3) through (d)(5), respectively;

■ c. Adding a new paragraph (d)(2); and

■ d. Revising newly redesignated paragraph (d)(3).

The revised and added text reads as follows:

**6.302–2 Unusual and compelling urgency.**

* * * * *

(d) * * *

(1) * * *

(ii) May not exceed one year, including all options, unless the head of the agency entering into the contract determines that exceptional circumstances apply. This determination must be documented in the contract file.

(2)(i) A separate determination shall be made when executing any modification or option that extends the period of performance beyond one year. This requirement does not apply to the exercise of options previously addressed in the determination required at (d)(1)(ii) of this section. Any subsequent extension requires a new determination.

(ii) The determination shall be approved at the same level as the level to which the agency head authority in (d)(1)(ii) of this section is delegated.

(3) The requirements in paragraphs (d)(1) and (d)(2) of this section shall apply to any contract in an amount greater than the simplified acquisition threshold.

* * * * *

[FR Doc. 2014–30417 Filed 12–29–14; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 20

**[Docket No. FWS–R9–HQ–2014–0064; FF09M21200–145–FXMB1231099BPP0]**

**RIN 1018–BA67**

## Migratory Bird Hunting; Service Regulations Committee Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Fish and Wildlife Service (hereinafter Service) will conduct an open meeting on January 28, 2015, to identify and discuss preliminary issues concerning the 2015–16 migratory bird hunting regulations.

**DATES:** The meeting will be held January 28, 2015.

**ADDRESSES:** The Service Regulations Committee meeting will be available to the public in the Rachel Carson conference room at 5275 Leesburg Pike, Falls Church, Virginia 22041.

**FOR FURTHER INFORMATION CONTACT:** Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–1714.

**SUPPLEMENTARY INFORMATION:** Under the authority of the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Service regulates the hunting of migratory game birds. We update the migratory game bird hunting regulations, located at 50 CFR part 20, annually. Through these regulations, we establish the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. To help us in this process, we have administratively divided the nation into four Flyways (Atlantic, Mississippi, Central, and Pacific), each of which has a Flyway Council. Representatives from the Service, the Service's Migratory Bird Regulations Committee, and Flyway Council Consultants will meet on January 28, 2015, at 11:00 a.m. to identify preliminary issues concerning the 2015–16 migratory bird hunting regulations for discussion and review by the Flyway Councils at their March meetings.

In accordance with Department of the Interior (hereinafter Department) policy regarding meetings of the Service Regulations Committee attended by any person outside the Department, these meetings are open to public observation. The Service is committed to providing access to this meeting for all

participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to the person listed under **FOR FURTHER INFORMATION CONTACT**, TTY 800–877–8339, with your request by close of business on January 20, 2015.

Dated: December 18, 2014.

**Michael J. Johnson,**

*Acting Assistant Director, Migratory Birds, U.S. Fish and Wildlife Service.*

[FR Doc. 2014–30429 Filed 12–29–14; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register

Vol. 79, No. 249

Tuesday, December 30, 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.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of January 7 Advisory Committee on Voluntary Foreign Aid Meeting

**AGENCY:** United States Agency for International Development.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: Wednesday, January 7, 2015.

Time: 2:00 p.m.–4:00 p.m.

Location: Ronald Reagan Building, 1300 Pennsylvania Avenue, Washington, DC 20004.

**Purpose**

The Advisory Committee on Voluntary Foreign Aid (ACVFA) brings together USAID and private voluntary organizations (PVO) officials, representatives from universities, international nongovernment organizations (NGOs), U.S. businesses, and government, multilateral, and private organizations to foster understanding, communication, and cooperation in the area of foreign aid.

**Agenda**

USAID Administrator Rajiv Shah will make opening remarks, followed by panel discussions among ACVFA members and USAID leadership on the Post-2014 and Financing for Development agendas. The full meeting agenda will be forthcoming on the ACVFA Web site at *http://www.usaid.gov/who-we-are/organization/advisory-committee.*

**Stakeholders**

The meeting is free and open to the public. Persons wishing to attend should register online at *http://ow.ly/wlC6G.*

**FOR FURTHER INFORMATION CONTACT:** Jayne Thomisee, 202–712–5506.

Dated: December 16, 2014.

**Jayne Thomisee,**

*Executive Director & Policy Advisor, U.S. Agency for International Development.*

[FR Doc. 2014–30291 Filed 12–29–14; 8:45 am]

BILLING CODE P

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Privacy Act of 1974; System of Records

**AGENCY:** United States Agency for International Development.

**ACTION:** Altered system of records.

**SUMMARY:** Pursuant to the Privacy Act, 5 U.S.C. 552a, the United States Agency for International Development (USAID) is issuing public notice for an altered system of records entitled, ''USAID–19 Travel and Transportation Records'' last published at [42 FR 47382 (Sept. 20, 1977)]. This action is necessary to meet the requirements of the Privacy Act, 5 U.S.C. 522a(e)(4), to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency.

**DATES:** In accordance with 5 U.S.C. 522a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, any comments must be received on or before January 29, 2015. Unless comments are received that would require a revision, this altered system of records will become effective on January 29, 2015.

**ADDRESSES:** You may submit comments:

*Electronic*

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- *Email: privacy@usaid.gov.*

*Paper*

- *Fax:* (703) 666–5670.
- *Mail:* Chief Privacy Officer, United States Agency for International Development, 1300 Pennsylvania Avenue NW., Washington, DC 20523.

**FOR FURTHER INFORMATION CONTACT:** The USAID Privacy Office at United States Agency for International Development, Bureau for Management, Office of the Chief Information Officer, Information Assurance Division, 1300 Pennsylvania Avenue NW., Washington, DC 20523; or via email at *privacy@usaid.gov.*

**SUPPLEMENTARY INFORMATION:** USAID has recently conducted a review of system of records notices and has determined that the notice for the system of records USAID–19 Travel and Transportation Records must be altered in order to reflect the current status of the system of records. USAID–19 is republished in full with all alterations, below.

Dated: November 20, 2014.

**William Morgan,**

*Chief Privacy Officer, United States Agency for International Development.*

**USAID–19**

**SYSTEM NAME:**

Travel and Transportation Records.

**SYSTEM LOCATION:**

United States Agency for International Development (USAID), 1300 Pennsylvania Avenue NW., Washington, DC 20523; Carlson Wagonlit facilities at several locations across the United States including Plymouth, NJ, Tulsa, OK, Chicago, IL, Phoenix, AZ, Omaha, NE, and Dallas, TX, and Austin, TX; U.S. Department of State, 2201 C Street NW., Washington, DC 20520; Global Financial Service Center (GFSC-DoS) 1969 Dyess Avenue, Building A, computer Room 2A228, Charleston, SC 29405; U.S. Department of State COOP Beltsville (BIMC), 8101 Odell Road, Floor/Room—173, Beltsville, MD 20705; and other USAID offices in the United States and throughout the world.

**CATEGORIES OF INDIVIDUALS IN THE SYSTEM:**

This system encompasses all individuals 1) whose travel is paid for by USAID; 2) whose the transportation of effects is paid for by USAID; and 3) who are USAID personnel and who travel on USAID business with United States diplomatic passports.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system consists of records created for the purposes of providing travel and the transportation of household goods for employees of USAID and its Missions around the world, as well as travel to interviews for certain applicants for employment with USAID. Records include name; social security number; advance amount, date issued, and amount outstanding; travel

authorizations and related payment vouchers; correspondence; itineraries; passport numbers; government bills of lading; government transportation requests; card files pertaining to passports, travel and shipment of effects; export/import permits; baggage declarations; customs declarations; passports and records of applications for visas; travel advance requests; arrival and departure notices; record of clearances prior to departure from the United States or posts abroad; packing lists and information on meetings abroad.

**AUTHORITY FOR MAINTENANCE OF SYSTEM OF RECORDS:**

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. Ch. 57, Travel, Transportation, and Subsistence; 22 U.S.C. Ch. 32, Foreign Assistance, Subchapter I, International Development; 22 U.S.C. 4081, Travel and Related Expenses.

**PURPOSE(S):**

Records in this system may be used: (1) To manage the centralized USAID relocation and travel of USAID employees and their dependents; (2) To facilitate move requests of USAID employees and their dependents; (3) To manage worldwide logistics services and integrated support for the transportation of the effects of USAID employees and their dependents; (4) To ensure fiscal accountability in transporting the effects of USAID employees and their dependents; (5) To facilitate passport issuance and compliance; and (6) To assist in substantiating a claim for missing or damaged household effects.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USE:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records contained in this system of records may be disclosed outside USAID as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To the U.S. Department of the Treasury for the purposes of payment of claims.

(2) To commercial travel, transportation and shipping companies and agents for the purposes of making travel and transportation arrangements.

(3) To U.S. Dispatch Agents for the purposes of arranging shipment and clearance of effects.

(4) To the General Services Administration and the Office of Management and Budget for the purposes of periodic reporting required by statute regulations, and/or Executive order. Information provided is in the form of listings, reports, and records of all transportation and travel related transactions, including refunds and adjustments, by the contractor, to enable audits of transportation and travel related charges to the Government.

(5) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when USAID is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary.

(6) To the Department of Justice or other appropriate United States Government Agency when the records are arguably relevant to a proceeding in a court or other tribunal in which USAID or a USAID official in his or her official capacity is a party or has an interest, or when the litigation is likely to affect USAID.

(7) In the event of an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by statute or particular program pursuant thereto, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(8) To the Department of State and its posts abroad for the purpose of transmission of information between organizational units of USAID, or for purposes related to the responsibilities of the Department of State in conducting United States foreign policy or protecting United States citizens, such as the assignment of employees to positions abroad, the reporting of accidents abroad, ensuring fiscal accountability in transporting the effects personnel stationed at embassies, evacuation of employees and dependents, and other purposes for which officers and employees of the Department of State have a need for the records in the performance of their duties.

(9) To a foreign government or international agency in response to its request for information to facilitate the conduct of U.S. relations with that government or agency through the issuance of such documents as visas, country clearances, identification cards, drivers' licenses, diplomatic lists, licenses to import or export personal effects, and other official documents and permits routinely required in connection with the official service or travel abroad of the individual and his or her dependents.

(10) To Shipping Contractors limited information is provided, such as delivery address and telephone number, for the purposes of providing shipping services.

(11) To Federal agencies with which USAID has entered into an agreement to provide services to assist USAID in carrying out its functions under the Foreign Assistance Act of 1961, as amended. Such disclosures would be for the purpose of transmission of information between organizational units of USAID; of providing to the original employing agency information concerning the services of its employee while under the supervision of USAID, including performance evaluations, reports of conduct, awards and commendations, and information normally obtained in the course of personnel administration and employee supervision; or of providing other information directly related to the purposes of the inter-agency agreement as set forth therein, and necessary and relevant to its implementation.

(12) To appropriate officials and employees of a federal agency or entity when the information is relevant to a decision concerning the hiring, appointment, or retention of an employee; the assignment, detail or deployment of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

(13) To the National Archives and Records Administration for the purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(14) To a former employee of USAID for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable agency regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the agency requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(15) To appropriate agencies, entities, and persons when (1) USAID suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) USAID 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 the USAID or another Agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USAID's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are stored on paper and/or electronic form; and are maintained in locked cabinets and/or user-authenticated, password-protected systems. Records that contain national security information and are classified are stored in accordance with applicable executive orders, statutes, and agency implementing regulations.

**RETRIEVABILITY:**

Records are retrieved by the names of the individuals about whom they are maintained.

**SAFEGUARDS:**

Information in this system is safeguarded in accordance with applicable laws, rules and policies, including the agency's automated directive system. In general, records are maintained in buildings with restricted access. The required use of password protection identification features and other system protection methods also restrict access. Paper records and Sensitive But Unclassified records are kept in an approved security container at the USAID Washington headquarters, and at the relevant locations where USAID has a program. The electronic records are stored in the End to End Travel Solutions (E2E) system, the Integrated Logistics Management System (ILMS), and the Phoenix Financial Management System, which are safeguarded in accordance with applicable laws, rules, and policies, including USAID's automated systems security and access policies. Access to the records is restricted to the individual for their own information and to those authorized USAID personnel and authorized contractors who have an official need to access the records in the performance of their official duties.

**RETENTION AND DISPOSAL:**

Records are retained and disposed of in accordance with disposition schedules approved by USAID and the National Archives and Records Administration.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Travel and Transportation Division, Management Services Office, Bureau for Management, United States Agency for International Development, 1300 Pennsylvania Avenue NW., Washington, DC 20523–2120.

**NOTIFICATION PROCEDURE:**

Same as Record Access Procedures.

**RECORDS ACCESS PROCEDURES:**

Under the Privacy Act, individuals may request access to records about themselves. If an agency or a person, who is not the individual who is the subject of the records, requests access to records about an individual, the written consent of the individual who is the subject of the records is required.

Requesters may submit requests for records under the Privacy Act: 1) by mail to the USAID FOIA Office, Bureau for Management, Office of Management Services, Information and Records Division, 1300 Pennsylvania Avenue NW., Room 2.07C—RRB, Washington, DC 20523–2701; 2) via Facsimile to 202–216–3070; 3) via email to *foia@usaid.gov;* 4) on the USAID Web site at *www.usaid.gov/foia-requests;* or 5) in person during regular business hours at USAID, 1300 Pennsylvania Avenue NW., Washington, DC 20523–2701, or at USAID overseas missions.

Requesters using 1 through 4 may provide a written statement or may complete and submit USAID Form 507–1, Freedom of Information/Privacy Act Record Request Form, which can be obtained: a) On the USAID Web site at *www.usaid.gov/foia* -requests; b) by email request to *foia@usaid.gov;* or c) by writing to the USAID FOIA Office, Bureau for Management, Office of Management Services, Information and Records Division, 1300 Pennsylvania Avenue NW., Room 2.07C—RRB, Washington, DC 20523–2701, and provide information that is necessary to identify the records, including the following: Requester's full name; present mailing address; home telephone; work telephone; name of subject, if other than requester; requester relationship to subject; description of type of information or specific records; and purpose of requesting information. Requesters should provide the system of record identification name and number, if known; and, to facilitate the retrieval of records contained in those systems of records which are retrieved by Social Security Numbers, the Social Security Number of the individual to whom the record pertains.

In addition, requesters using 1 through 4 must include proof of identity information by providing copies of two (2) source documents that must be notarized by a valid (un-expired) notary public. Acceptable proof-of-identity source documents include: an unexpired United States passport; Social Security Card (both sides); unexpired United States Government employee identity card; unexpired driver's license or identification card issued by a state or United States possession, provided that it contain a photograph; certificate of United States citizenship; certificate of naturalization; card showing permanent residence in the United States; United States alien registration receipt card with photograph; United States military card or draft record; or United States military dependent's identification card.

Requesters using 1 through 4 must also provide a signed and notarized statement that they are the person named in the request; that they understand that any falsification of their statement is punishable under the provision of 18 U.S.C. 1001 by a fine, or by imprisonment of not more than five years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisonment of not more than eight years, or both; and that requesting or obtaining records under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) as a misdemeanor and by a fine of not more than $5,000.

Requesters using 5 must provide such personal identification as is reasonable under the circumstances to verify the requester's identity, including the following: an unexpired United States passport; Social Security Card; unexpired United States Government employee identity card; unexpired driver's license or identification card issued by a state or United States possession, provided that it contain a photograph; certificate of United States citizenship; certificate of naturalization; card showing permanent residence in the United States; United States alien registration receipt card with photograph; United States military card or draft record; or United States military dependent's identification card.

**CONTESTING RECORDS PROCEDURES:**

Individuals seeking to contest or amend records maintained on himself or herself must clearly and concisely state that information is being contested, and

the proposed amendment to the information sought. Requests to amend a record must follow the Record Access Procedures above.

**RECORDS SOURCE CATEGORIES:**

Sources of records include individuals whose travel and transportation of effects are paid by USAID and its Missions; and USAID officials and employees involved in the travel and transportation of household goods.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2014–30289 Filed 12–29–14; 8:45 am]

**BILLING CODE 6116–02–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2014–0103]**

### Notice of Request for Extension of Approval of an Information Collection; Importation of Tomatoes From the Souss-Massa-Draa Region of Morocco

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the importation of tomatoes from the Souss-Massa-Draa region of Morocco.

**DATES:** We will consider all comments that we receive on or before March 2, 2015.

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0103.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2014–0103, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0103* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** For information on the regulations for the importation of tomatoes from the Souss-Massa-Draa region of Morocco, contact Mr. Dennis Martin, Trade Director, PIM, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737; (301) 851–2033. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

**SUPPLEMENTARY INFORMATION:**

*Title:* Importation of Tomatoes From the Souss-Massa-Draa Region of Morocco.

*OMB Control Number:* 0579–0345.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* Under the Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. As authorized by the PPA, the Animal and Plant Health Inspection Service regulates the importation of certain fruits and vegetables in accordance with the regulations contained in ''Subpart–Fruits and Vegetables'' (7 CFR 319.56 through 319.56–71).

The regulations in § 319.56–28(g) allow tomatoes from the Souss-Massa-Draa region of Morocco to be imported into the United States subject to certain conditions that will protect the tomatoes from infestation by the Mediterranean fruit fly (Medfly). Among other things, the regulations include requirements for pest-exclusionary structures, fruit fly trapping for production sites, and pest-exclusionary packing procedures. In addition, the tomatoes must be pink at the time of packing. Allowing tomatoes to be imported in accordance with the regulations necessitates the use of certain information collection activities, including a phytosanitary certificate with a declaration, production site registration, and maintenance of records of trap placement, trap maintenance, and any Medfly captures.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 1 hour per response.

*Respondents:* Importers, exporters, growers of tomatoes, and the national plant protection organization of Morocco.

*Estimated annual number of respondents:* 11.

*Estimated annual number of responses per respondent:* 36.

*Estimated annual number of responses:* 398.

*Estimated total annual burden on respondents:* 395 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 22nd day of December 2014 .

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2014–30499 Filed 12–29–14; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2014–0091]**

### Notice of Request for Extension of Approval of an Information Collection; Emergency Management Response System

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the Emergency Management Response System.

**DATES:** We will consider all comments that we receive on or before March 2, 2015.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0091.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2014–0091, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0091* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** For information on the Emergency Management Response System, contact Dr. Fred Bourgeois, EMRS National Coordinator, PIC, NPIC, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737; (318) 288–4083. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

**SUPPLEMENTARY INFORMATION:**

*Title:* Emergency Management Response System.

*OMB Control Number:* 0579–0071.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to protect the health of U.S. livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and by eradicating such diseases from the United States when feasible.

The Emergency Management Response System (EMRS), which is a web-based system, helps APHIS manage and investigate potential incidents of foreign animal diseases in the United States.

When a potential foreign animal disease incident is reported, APHIS or State animal health officials dispatch a foreign animal disease veterinary diagnostician to the premises of the reported incident to conduct an investigation. The diagnostician obtains vital epidemiologic data by conducting field investigations, including sample collection, and by interviewing the owner or manager of the premises being investigated. These important data, submitted electronically by the diagnostician into EMRS, include such items as the purpose of the diagnostician's visit and suspected disease, type of operation on the premises, the number and type of animals on the premises, the number of sick or dead animals on the premises, the results of physical examinations of affected animals and necropsy examinations, vaccination information on the animals in the herd or flock, biosecurity practices at the site, whether any animals were recently moved out of the herd or flock, whether any new animals were recently introduced into the herd or flock, the number and kinds of test samples taken, and detailed geographic data concerning the premises location. EMRS allows these epidemiological and diagnostic data to be documented and transmitted more efficiently.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, such as electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 1.0 hour per response.

*Respondents:* Owners or operators of livestock and poultry facilities and State animal health officials.

*Estimated annual number of respondents:* 387.

*Estimated annual number of responses per respondent:* 4.

*Estimated annual number of responses:* 1,548.

*Estimated total annual burden on respondents:* 1,548 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 22nd day of December 2014.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2014–30509 Filed 12–29–14; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2014–0107]**

### Notice of Request for Revision to and Extension of Approval of an Information Collection; Bovine Spongiform Encephalopathy; Importation of Animals and Animal Products

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Revision to and extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the importation of animals and animal products and byproducts to protect against the introduction of bovine spongiform encephalopathy into the United States.

**DATES:** We will consider all comments that we receive on or before March 2, 2015.

**ADDRESSES:** You may submit comments by either of the following methods:

• Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2014-0107.*

• Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2014–0107, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0107* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** For information on the regulations for the importation of animals and animal products and byproducts to prevent the introduction of bovine spongiform encephalopathy into the United States, contact Dr. Langston Hull, Senior Staff Veterinarian, Veterinary Services, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737; (301) 851–3363. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

**SUPPLEMENTARY INFORMATION:**

*Title:* Bovine Spongiform Encephalopathy; Importation of Animals and Animal Products.

*OMB Control Number:* 0579–0234.

*Type of Request:* Revision to and extension of approval of an information collection.

*Abstract:* Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases. The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of animal diseases, including bovine spongiform encephalopathy (BSE), a chronic degenerative disease affecting the central nervous system of cattle.

To help ensure that BSE is not introduced into the United States, the regulations place specified conditions on the importation of certain live ruminants and ruminant products and byproducts. These requirements necessitate the use of several information collection activities, including Veterinary Services (VS) Form 16–3, permit application; certification statements for the importation of ruminants and ruminant products; certificate for inedible processed animal origin materials and products from BSE-free regions; cooperative service agreements with foreign facilities that process and store regulated materials and products destined for importation into the United States; VS Form 17–33, Animals Imported for Immediate Slaughter; the placing of seals on conveyances from the exporting region; agreement with slaughter facilities on use of seals on conveyances transporting animals from BSE minimal-risk regions; notification regarding conditions of sealed shipments; and notification of designated individuals authorized to break seals.

In addition to the above information collection activities, we are adding VS Form 17–130, Ruminants Imported to Designated/Approved Feedlots; and VS Form 1–27, Permit for Movement of Restricted Animals. As a result of adding these two activities and the increase in importations from Canada, the estimated annual number of responses has increased by 110,463, and the estimated total annual burden on respondents has increased by 160,983 hours.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 1 hour per response.

*Respondents:* Herd owners, U.S. importers of regulated animal products, salaried veterinarians in BSE-free regions and BSE-affected regions, foreign exporters of processed animal protein and other regulated materials and products, accredited veterinarians, feedlot managers, and slaughter facility managers.

*Estimated annual number of respondents:* 4,500.

*Estimated annual number of responses per respondent:* 52.

*Estimated annual number of responses:* 235,752.

*Estimated total annual burden on respondents:* 231,307 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 22nd day of December 2014.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2014–30501 Filed 12–29–14; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request—USDA Foods in Schools Cost Dynamics

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) invites the general public and other public agencies to comment on this proposed information collection. This is a new collection for a study of USDA Foods in Schools Cost Dynamics.

**DATES:** Written comments on this notice must be received on or before March 2, 2015.

**ADDRESSES:** 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 those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Dennis Ranalli, Policy Analyst, Office of Policy Support, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Dennis Ranalli at 703–305–2576 or via email to *dennis.ranalli@fns.usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22301.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Dennis Ranalli at 703–305–2149.

**SUPPLEMENTARY INFORMATION:**

*Title:* USDA Foods in Schools Cost Dynamics.

*Form Number:* N/A.

*OMB Number:* Not yet assigned.

*Expiration Date:* Not yet determined.

*Type of Request:* New collection.

**Abstract**

USDA Foods play an important role in school meals and may contribute up to 20% of the foods served in school meals through the National School Lunch Program (NSLP). States and School Food Authorities (SFAs) receive a USDA Foods entitlement to acquire products offered through the USDA Foods program. USDA Foods can be directly delivered from USDA's vendor to state warehouses, distributors, buying cooperatives, or SFAs. Fruits and vegetables can be requisitioned through the Department of Defense (DoD) Fresh Fruit and Vegetable Program. Bulk USDA Foods can be sent directly to a processor to create final products for use in school meals.

An SFA's costs of using USDA Foods begin with how it spends its entitlement, which is managed by State Distribution Agencies (SDAs). SFAs incur additional costs to obtain USDA Foods, for procurement, storage, distribution and administration. These functions are performed by a variety of agencies involved in this process (FNS, SDAs, storage/distribution contractors, SFAs and schools). SDAs may absorb some of these costs. Finally, the model of contracting with food processors may affect the full cost of USDA Foods to SFAs—whether the contract is a payment for final product (with a rebate or discount for the SFA) or a payment for service, *i.e.* for transforming the USDA Food into a final product.

While several USDA-funded studies have examined SFA food purchasing practices and have compared foods purchased by SFAs with commercial products, very little research has focused specifically on the full cost of USDA Foods used in school meals. The most recent study on this topic, and the model for the current study, is the State Commodity Distribution System study covering the 1985–86 school year.

The proposed study will examine the variety of factors that determine the cost and value of USDA Foods to local school and school district food programs. The objectives of the study are to (1) identify distribution models (including procurement, transportation, storage and delivery) used by 49 states and the District of Columbia to distribute USDA Foods to schools; (2) identify 4 to 10 procurement and distribution models that represent the state systems used in School Year (SY) 2015–16; and (3) develop cost estimates for a group of USDA Foods, full processed products made from USDA Foods, and comparable commercial products.

*Affected Public:* Respondent groups include: (1) State officials with responsibility for USDA Food provision and (2) directors of school food authorities.

*Estimated Number of Respondents:* 440–950. The proposed final samples will include State Distribution Agencies in up to 49 States and the District of Columbia, and 112–280 unique SFAs, depending on how many distribution models are studied (Kansas is excluded because it receives cash payments in lieu of USDA foods). The number studied will be determined on the basis of the results of the survey of SDAs.

*Estimated Frequency of Responses per Respondent:* All respondents will be asked to respond to each instrument only once.

*Estimated Total Annual Responses:* 440–950, depending on the number of distribution models studied.

*Estimated Time per Response:* 43 minutes (0.72 hours). The estimated response time varies from 5 minutes for notifications of the surveys to 360 minutes (6 hours), depending on the survey and the respondent group, as shown in the following table.

*Estimated Total Annual Burden on Respondents:* 308 to 693 hours.

| Affected public | Data collection activity | Respondents | Estimated number of respondents | Frequency of response | Total annual responses | Average hours per response | Total annual burden estimate (hours) |
|---|---|---|---|---|---|---|---|
| State | Notify state officials of web survey. | State education agency financial officer. | 50 | 1 | 50 | 0.08 | 4 |
| State | Self-Administered Web Survey. | Non-respondents. | 3 | 1 | 3 | 0.08 | 0.2 |
| | (Administrative data on USDA Food costs). | State education agency financial officer. | 47 | 1 | 47 | 1.0 | 47 |
| State | Notify state officials of in-person interview. | State education agency financial officer. | 8–20 | 1 | 8–20 | 0.25 | 2–5 |

| Affected public | Data collection activity | Respondents | Estimated number of respondents | Frequency of response | Total annual responses | Average hours per response | Total annual burden estimate (hours) |
|---|---|---|---|---|---|---|---|
| State | In-person interview of state distribution agency (Additional information on USDA Food costs). | State education agency financial officer. | 8–20 | 1 | 8–20 | 6 | 48–120 |
| Local and Tribal | Notify local and tribal officials of web survey. | Foodservice director. | 112–280 | 1 | 112–280 | 0.08 | 9.0–22.4 |
| Local and Tribal | Self-Administered Web Survey. | Non-respondents. | 12–30 | 1 | 12–30 | 0.08 | 1.0–2.4 |
| | (Administrative data on USDA Food costs). | Foodservice director. | 100–250 | 1 | 100–250 | 0.75 | 75.0–187.5 |
| | Phone Follow-up Survey. | Nonrespondents. | 20–50 | 1 | 20–50 | 0.08 | 1.6–4.0 |
| | (Administrative data on USDA Food costs). | Foodservice director. | 80–200 | 1 | 80–200 | 1.5 | 120–300 |
| Grand Total | | | 440–950 | 1 | 440–950 | 0.72 | 308–693 |

Dated: December 22, 2014.

**Audrey Rowe,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2014–30492 Filed 12–29–14; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2014–0035]**

### Notice of Request for a Renewal Information Collection (Marking, Labeling and Packaging)

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to renew a currently approved information collection regarding the regulatory requirements for marking, labeling, and packaging of meat, poultry, and egg products and for establishments that produce mechanically separated poultry. This approval covers the labeling approval process whereby establishments are to submit their labels to FSIS for approval or maintain files related to generic labeling. This package also covers the recordkeeping burden for packaging material letters of guarantee for safety. Lastly, this package contains the recordkeeping burden imposed on establishments that produce mechanically separated poultry. There are no changes to the existing information collection.

**DATES:** Comments on this notice must be received on or before March 2, 2015.

**ADDRESSES:** FSIS invites interested persons to submit comments on this notice. Comments may be submitted by the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163B, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E Street SW., Room 8–164, Washington, DC 20250–3700.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2013–0035. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

*Docket:* For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

*For Additional Information:* Contact Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6077 South Building, Washington, DC 20250, (202) 690–6510.

**SUPPLEMENTARY INFORMATION:**

*Title:* Marking, Labeling, and Packaging.

*OMB Number:* 0583–0092.

*Expiration Date of Approval:* 03/31/2015.

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

*Abstract:* FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome,

not adulterated, and correctly labeled and packaged.

FSIS is requesting a renewal of an approved information collection addressing paperwork requirements specified in the regulations related to marking, labeling, and packaging of meat, poultry, and egg products and to establishments that produce mechanically separated poultry.

To control the manufacture of marking devices bearing official marks, FSIS requires official meat and poultry establishments and the manufacturers of such devices to submit an Authorization Certificate to the Agency (FSIS Form 5200–7). Such certification is necessary to help prevent the manufacture and use of counterfeit marks of inspection (9 CFR 312.1, 317.3, 381.96 & 381.131).

Meat and poultry establishments and egg products plants must develop labels in accordance with FSIS regulations (9 CFR 317.1, 381.115, & 590.410). To receive approval for such labels, establishments must complete a form (''Application for Approval of Labels, Marking or Device,'' FSIS Form 7234–1). Respondents also must submit duplicate copies of the labels when submitting the applications by paper. Establishments may also submit labels through the Label Submission and Approval System or LSAS. LSAS is an Internet-based application that allows respondents to gain label approval through a secure Web site. The establishment must maintain a copy of all the labeling used, along with product formulation and processing procedures (9 CFR 320.1(b)(11) and 381.175(b)(6)). Additionally, establishments requesting reconsideration of a label application that the Agency has modified or rejected must use the''Request for Label Reconsideration,'' FSIS Form 8822–4.

Labels that FSIS approved but change for such reasons as, holiday season designs, addition or deletion of coupons, UPC production codes, or recipe suggestions; newly assigned or revised establishment numbers; changes in the arrangement or language of directions for opening containers or serving the product; or the substitution of abbreviations for words or vice versa, do not need additional FSIS approval (9 CFR 317.5). Establishments must keep a copy of the labeling used, along with the product formulation and processing procedures on file.

FSIS has made the following estimates based upon an information collection assessment:

*Estimate of Burden:* FSIS estimates that it will take respondents an average of 4 minutes per response related to marking; 75 minutes per response related to labeling applications and recordkeeping; 120 minutes per response related to labeling reconsideration requests; 15 minutes per response related to generically approved labeling recordkeeping; 2 minutes per response related to packaging materials recordkeeping; and 5 minutes per response related to mechanically separated poultry recordkeeping.

*Respondents:* Official meat and poultry establishments, official egg plants, and foreign establishments.

*Estimated No. of Respondents:* 5,736 related to marking; 3,682 related to labeling applications and recordkeeping; 74 related to labeling reconsideration requests; 6,333 related to generically approved labeling recordkeeping; 5,735 related to packaging materials recordkeeping; and 82 related to mechanically separated poultry recordkeeping.

*Estimated No. of Annual Responses per Respondent:* 1 related to marking; 20 related to labeling applications and recordkeeping; 2 related to labeling reconsideration requests; 20 related to generically approved labeling recordkeeping; 2 related to packaging materials recordkeeping; and 455 related to mechanically separated poultry recordkeeping.

*Estimated Total Annual Burden on Respondents:* 128,267 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence SW., Room 6077, South Building, Washington, DC 20250, (202) 690–6510.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

## Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/wps/portal/fsis/programs-and-services/email-subscription-service.*

Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password-protect their accounts.

## USDA Nondiscrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

## How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email: Mail, U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW.,

Washington, DC 20250–9410; Fax, (202) 690–7442; Email, *program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC on: December 23, 2014.

**Alfred V. Almanza,**

*Acting Administrator.*

[FR Doc. 2014–30478 Filed 12–29–14; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2014–0029]**

### National Advisory Committee on Microbiological Criteria for Foods; Renewal

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of renewal of committee.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice is announcing the renewal of the charter of the National Advisory Committee on Microbiological Criteria for Foods (NACMCF). The Committee is being renewed in cooperation with the Department of Health and Human Services (DHHS). The establishment of the Committee was recommended by a 1985 report of the National Academy of Sciences Committee on Food Protection, Subcommittee on Microbiological Criteria, ''An Evaluation of the Role of Microbiological Criteria for Foods.'' The current charter for the NACMCF is available for viewing on the NACMCF homepage at *http://www.fsis.usda.gov/wps/portal/searchhelp/sitemap/!ut/p/a1/rZLLbsIwEEW_hUWWlsfNg2RJI5FC1UQU2pJskPEjNUqckFhV1a-vU4G6ohQp3oxHvj66M7q4wFtcaPqhSmpUo2k19EWwgxUEJIphmUVkDov0dZU9xjEkT3dWkA-CC2cG1_6_4QIXTJvWvONc9qpHrNFGaOOAsrXTwt5qqrQDpmkV6x3g1FCrqirBBpeIao460TadsY-asprJcx3gLS0FF70q9U_HFMd5ILlwCeeIuq5AXhgJtOcBRb4MPElCT7pwsvaH-9A7Cy5Pn9v1TH8JyTMQWMzXG5L492RmCesbTV0BBmMD_bGB05GB2e07XP4j1OpwPBYzG80hjZ8Gb8fPZlu_1OFBtg9fG1nXuzRFdB-C61flZPIN_bauiQ!!/?1dmy&current=true&uri=wcm%3apath%3a%2Ffsis-content%2Finternet%2Fmain%2Ftopics%2Fdata-collection-and-reports%2Fnacmcf%2Fcommittee-charter%2Fcharter.*

**FOR FURTHER INFORMATION CONTACT:** Karen Thomas, Advisory Committee Specialist, U.S. Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS), Room 9–214D Patriots Plaza III, 1400 Independence Avenue SW., Washington, DC 20250–3700. Telephone number: (202) 690–6620.

**SUPPLEMENTARY INFORMATION:**

### Background

USDA is charged with the administration and the enforcement of the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), and the Egg Products Inspection Act (EPIA). The Secretary of DHHS is charged with the administration and enforcement of the Federal Food, Drug, and Cosmetic Act (FFDCA). These Acts help protect consumers by ensuring that food products are wholesome, not adulterated, and properly marked, labeled, and packaged.

In order to assist the Secretaries in carrying out their responsibilities under the FMIA, PPIA, EPIA, and FFDCA, the NACMCF is being renewed. The Committee will continue to be charged with providing recommendations to the Secretaries on the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been adequately and appropriately processed.

Renewal of this Committee and its charter is necessary and in the public interest because of the need for external expert advice on the range of scientific and technical issues that must be addressed by the FSIS and DHHS in meeting their statutory responsibilities. To address the complexity of the issues, the Committee is expected to meet one or more times annually.

Members will be appointed by the Secretary of USDA after consultation with the Secretary of the DHHS. Because of the complexity of matters addressed by this Committee, the Secretary may consult with other Federal Agencies, such as the Department of Commerce's National Marine Fisheries Service, the Department of Defense's Veterinary Service Activity, and the DHHS' Centers for Disease Control and Prevention, for advice on membership appointments. Background materials are available on the Internet at the address noted above or by contacting the person listed above.

*Additional Public Notification*

FSIS will announce this notice online through the FSIS Web page located at*http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update (Update), which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update also is available on the FSIS Web site. In addition, FSIS offers an electronic mail subscription service that provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.*

Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

*USDA Nondiscrimination Statement*

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status.

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC on: December 23, 2014.

**Alfred V. Almanza,**

*Acting Administrator.*

[FR Doc. 2014–30483 Filed 12–29–14; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Office of the Secretary

**[Docket No. 141217999–4999–01]**

**RIN 0690–XC003**

### Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

**AGENCY:** Department of Commerce (DOC).

**ACTION:** Notice.

**SUMMARY:** This notice replaces the U.S. Department of Commerce (DOC) Pre-Award Notification Requirements for Grants and Cooperative Agreements most recently published in the **Federal Register** on December 17, 2012 (77 FR 74634). This announcement constitutes notice of a recompilation of the Department of Commerce pre-award requirements for grants and cooperative agreements, including all amendments and revisions to date.

**DATES:** This notice is effective on December 26, 2014.

**FOR FURTHER INFORMATION CONTACT:** John Geisen, Department of Commerce Office of Acquisition Management, Telephone Number: (202) 482–0602.

**SUPPLEMENTARY INFORMATION:** The DOC is authorized to award grants and cooperative agreements under a wide range of programs that support economic development, international trade, minority businesses, standards and technology, oceanic/atmospheric services, and telecommunications and information. It is the policy of the DOC to seek full and open competition for awards of discretionary financial assistance funds whenever possible. Moreover, in general DOC financial assistance must be awarded through a merit-based review and selection process. Notices announcing the availability of Federal funds for new awards for each DOC competitive financial assistance program will be posted on *www.grants.gov* by the sponsoring operating unit in the uniform format for an announcement of Notice of Funding Opportunity (NOFA) published by the Office of Management and Budget (OMB). Note that the DOC may use the term ''Federal Funding Opportunity (FFO)'' interchangeably with NOFA. In limited circumstances (*e.g.,* when required by statute), the DOC will also publish notices in the **Federal Register** announcing the availability of Federal funds for new awards.

In accordance with the **Federal Register** notice published on December 19, 2014 (79 FR 75871) and the regulation at 2 CFR 1327.101, the DOC adopted the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 (OMB Uniform Guidance) for DOC Federal financial assistance awards (*i.e.,* grants and cooperative agreements). The DOC is updating its policies and administrative requirements applicable to its assistance programs to reflect the requirements of the OMB Uniform Guidance.

This announcement provides notice to applicants and other interested parties that various laws, regulations, administrative requirements, and Federal and DOC policies procedures apply to all DOC-sponsored assistance programs. A compilation of these requirements may be found on the DOC Web site at *http://www.osec.doc.gov/oam/grants_management/policy/default.htm.* Please note that as these requirements change, the DOC Web site will be updated, but there may be a time lag between when a requirement is effective and when it is posted at the previously referenced Web site. All requirements applicable to Federal awards will be clearly identified in the terms and conditions of the Federal award.

Dated: December 22, 2014.

**John Geisen,**

*Grants Management Division, Office of Acquisition Management, Department of Commerce.*

[FR Doc. 2014–30297 Filed 12–29–14; 8:45 am]

**BILLING CODE 3510–17–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[12/19/2014 through 12/22/2014]

| Firm name | Firm address | Date accepted for investigation | Product(s) |
|---|---|---|---|
| Sunheat International ..... | 3724 Arch Avenue, Grand Island, NE 68803. | 12/22/2014 | The firm manufactures electrical heating devices including portable heaters, fireplaces, saunas, and patio heaters. |

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: December 22, 2014.

**Michael S. DeVillo,**

*Eligibility Examiner.*

[FR Doc. 2014–30496 Filed 12–29–14; 8:45 am]

**BILLING CODE 3510–WH–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Order Denying Export Privileges

In the Matter of:

Maria Luisa Sanchez-Lopez, Inmate Number: 51777–379, FCI Aliceville, Federal Correctional Institution, P.O. Box 4000, Aliceville, AL 35442

On February 13, 2014, in the U.S. District Court for the Southern District of Texas, Maria Luisa Sanchez-Lopez (''Sanchez-Lopez'') was convicted of

violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)). Specifically, Sanchez-Lopez conspired to knowingly and willfully export and attempted to export and caused to be exported from the United States to Mexico approximately 98 AK47 magazines and 707 rounds of 7.62mm ammunition, which were designated as defense articles on the United States Munitions List, without having first obtained from the Department of State a license for such export or written authorization for such export. Sanchez-Lopez was sentenced 46 months of imprisonment and fined a $100 assessment.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'')[1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

BIS has received notice of Sanchez-Lopez's conviction for violating AECA, and in accordance with Section 766.25 of the Regulations, BIS has provided notice and an opportunity for Sanchez-Lopez to make a written submission to BIS. BIS has not received a submission from Sanchez-Lopez.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Sanchez-Lopez's export privileges under the Regulations for a period of 10 years from the date of Sanchez-Lopez's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Sanchez-Lopez had an interest at the time of her conviction.

Accordingly, it is hereby *ordered:*

*First,* from the date of this Order until February 13, 2024, Maria Luisa Sanchez-Lopez, with a last known address of Inmate Number: 51777–379, FCI Aliceville, Federal Correctional Institution, P.O. Box 4000, Aliceville, AL 35442, and when acting for or on her behalf, her successors, assigns, employees, agents or representatives (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

*Second,* no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third,* after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Sanchez-Lopez by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

*Fourth,* in accordance with Part 756 of the Regulations, Sanchez-Lopez may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

*Fifth,* a copy of this Order shall be delivered to Sanchez-Lopez. This Order shall be published in the **Federal Register**.

*Sixth,* this Order is effective immediately and shall remain in effect until February 13, 2024.

Issued this 22 day of December, 2014.

**Karen H. Nies-Vogel,**

*Director, Office of Exporter Services.*

[FR Doc. 2014–30556 Filed 12–29–14; 8:45 am]

BILLING CODE P

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2014). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2014 (79 FR 46959 (August 11, 2014)), has continued the Regulations in effect under IEEPA.

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Order Denying Export Privileges

In the Matter of:

Gregorio Rodriguez-Aranda, Inmate Number: 51776–379, D. Ray James, Correctional Institution, P.O. Box 2000, Folkston, GA 31537

On February 13, 2014, in the U.S. District Court for the Eastern District of New York, Gregorio Rodriguez-Aranda (''Rodriguez-Aranda'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)). Specifically, Rodriguez-Aranda conspired to knowingly and willfully export and attempted to export and caused to be exported from the United States to Mexico approximately 98 AK47 magazines and 707 rounds of 7.62mm ammunition, which were designated as defense articles on the United States Munitions List, without having first obtained from the Department of State a license for such export or written authorization for such export. Rodriguez-Aranda was sentenced 57 months of imprisonment and fined a $100 assessment.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

BIS has received notice of Rodriguez-Aranda's conviction for violating AECA, and in accordance with Section 766.25 of the Regulations, BIS has provided notice and an opportunity for Rodriguez-Aranda to make a written submission to BIS. BIS has not received a submission from Rodriguez-Aranda.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Rodriguez-Aranda's export privileges under the Regulations for a period of 10 years from the date of Rodriguez-Aranda's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Rodriguez-Aranda had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

*First,* from the date of this Order until February 13, 2024, Gregorio Rodriguez-Aranda, with a last known address of Inmate Number: 51766–379, D. Ray James, Correctional Institution, P.O. Box 2000, Folkston, GA 31537, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

*Second,* no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third,* after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Rodriguez-Aranda by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

*Fourth,* in accordance with Part 756 of the Regulations, Rodriguez-Aranda may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

*Fifth,* a copy of this Order shall be delivered to the Rodriguez-Aranda. This Order shall be published in the **Federal Register**.

*Sixth,* this Order is effective immediately and shall remain in effect until February 13, 2024.

Issued this 22 day of December 2014.

**Karen H. Nies-Vogel,**

*Director, Office of Exporter Services.*

[FR Doc. 2014–30560 Filed 12–29–14; 8:45 am]

BILLING CODE P

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2014). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2014 (79 FR 46959 (August 11, 2014)), has continued the Regulations in effect under IEEPA.

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Order Denying Export Privileges

In the Matter of: Zhifu Lin, Inmate Number: 08295–087, CI Moshannon Valley, 555 Geo Drive, Philipsburg, PA 16866

On November 15, 2013, in the U.S. District Court for the Eastern District of New York, Zhifu Lin (''Lin'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)). Specifically, Lin knowingly and willfully exported from the United States to China firearms and firearms barrels, including a Beretta 9mm semi-automatic handgun, which were designated as defense articles on the United States Munitions List, without first obtaining the required license or written approval from the State Department. Lin was sentenced 108 months of imprisonment, three years of supervised release, and fined a $200 assessment.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

BIS has received notice of Lin's conviction for violating AECA, and in accordance with Section 766.25 of the Regulations, BIS has provided notice and an opportunity for Lin to make a written submission to BIS. BIS has not received a submission from Lin.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Lin's export privileges under the Regulations for a period of 10 years from the date of Lin's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Lin had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

*First,* from the date of this Order until November 15, 2023, Zhifu Lin, with a last known address of Inmate Number: 08295–087, CI Moshannon Valley, 555 Geo Drive, Philipsburg, PA 16866, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

*Second,* no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third,* after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Lin by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

*Fourth,* in accordance with Part 756 of the Regulations, Lin may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

*Fifth,* a copy of this Order shall be delivered to the Lin. This Order shall be published in the **Federal Register**.

*Sixth,* this Order is effective immediately and shall remain in effect until November 15, 2023.

Issued this 22nd day of December 2014.

**Karen H. Nies-Vogel,**

*Director, Office of Exporter Services .*

[FR Doc. 2014–30600 Filed 12–29–14; 8:45 am]

BILLING CODE P

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2014). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2014 (79 FR 46959 (August 11, 2014)), has continued the Regulations in effect under IEEPA.

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Fiber Materials, Inc., 5 Morin Street, Biddeford, ME 04005, Respondent; Order Waiving Remainder of Denial Order Period

On March 12, 2007, BIS issued an order denying the export privileges of Fiber Materials, Inc. (''FMI''), of Biddeford, Maine, until November 18, 2015, pursuant to Section 11(h) of the Export Administration Act of 1979, as amended (''Act''), and Section 766.25 of the Export Administration Regulations (''Regulations''), based on FMI's criminal conviction for violating the Act by knowingly exporting and causing to be exported from the United States to India a component, accessory and controls for a hot isostatic press without having obtained the required export license from BIS.[1] The March 12, 2007 Order provided a standard denial of export privileges that prohibited FMI from participating in any way in any transaction involving the export from the United States of any item subject to the Regulations or in any other activity subject to the Regulations.

Subsequent to the issuance of the March 12, 2007 Order, ownership and management control of FMI changed. Ultimately, by letter dated February 10, 2014, GrafTech International Ltd. (''GrafTech'') submitted a request on behalf of FMI, GrafTech's wholly-owned subsidiary, seeking to terminate the denial order. The request seeks relief on various grounds, including due to a strong compliance program that has been put into place and updated by FMI/GrafTech. BIS has reviewed the compliance program, including through an Office of Export Enforcement site visit at FMI. Upon consideration of the compliance program and the totality of the circumstances found here,

*It is therefore ordered:*

1. That the remainder of the denial order period imposed on Fiber Materials, Inc., 5 Morin Street, Biddeford, ME 04005, its successors or assigns, and, when acting for or on behalf of FMI, its officers, representatives, agents or employees, under the March 12, 2007 Order is hereby waived upon the effective date of this Order; and

2. That this Order shall be effective upon publication in the **Federal Register**.

Issued this 19th day of December, 2014.

**Karen Nies-Vogel,**

*Director, Office of Exporter Services.*

[FR Doc. 2014–30301 Filed 12–29–14; 8:45 am]

BILLING CODE P

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2014). The underlying criminal conduct occurred in April 1988, for which FMI was tried criminally in 1995, and for which ultimately a judgment of conviction issued against FMI following its sentencing on November 18, 2005. *See* March 12, 2007 Order; *U.S.* v. *Lachman,* 521 F.3d 12 (1st Cir. 2008). Since August 21, 2001, the Act (50 U.S.C. app. §§ 2401–2420 (2000)) has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2014 (79 FR 46959 (Aug. 11, 2014)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) (2006 & Supp. IV 2010).

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–421–811]**

### Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review; 2012–2013

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

**SUMMARY:** On August 21, 2014, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty (AD) order on purified carboxymethylcellulose (CMC) from the Netherlands.[1] We invited interested parties to comment on the *Preliminary Results.* We received no comments or requests for a hearing. Therefore, for the final results, we continue to find that sales of subject merchandise by Akzo Nobel Functional Chemicals, B.V. (Akzo Nobel) were not made at less than normal value during the period of review (POR).

**DATES:** *Effective Date:* December 30, 2014.

**FOR FURTHER INFORMATION CONTACT:** Ericka Ukrow or Angelica Mendoza, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0405, and (202) 482–3019, respectively.

### Background

On August 21, 2014, the Department published the *Preliminary Results.* The POR is July 1, 2012 through June 30, 2013. We invited interested parties to comment on the *Preliminary Results.* We received no comments or requests for a hearing. The Department conducted this administrative review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act).

### Scope of the Order

The product covered by the order is all purified CMC, sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations, which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent.

The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and Customs purposes; however, the written description of the scope of the order is dispositive.

### Final Results of Review

As noted above, the Department received no comments concerning the *Preliminary Results* on the record of this segment of the proceeding. As there are no changes from, or comments upon, the *Preliminary Results,* the Department finds that there is no reason to modify its analysis. Thus, we continue to find that sales of subject merchandise by Akzo Nobel were not made at less than normal value during the POR. Accordingly, no decision memorandum accompanies this **Federal Register** notice. For further details of the issues addressed in this proceeding, *see* the *Preliminary Results* and the accompanying Preliminary Decision Memorandum.[2] The final weighted-average dumping margin for the period July 1, 2012, through June 30, 2013 for Akzo Nobel is as follows:

[1] *See Purified Carboxymethylcellulose From the Netherlands: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 49494 (August 21, 2014) (*Preliminary Results*).

[2] *See* ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative: Purified Carboxymethylcellulose from the Netherlands,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, dated August 14, 2014 (Preliminary Decision Memorandum), which can be accessed directly at *http://enforcement.trade.gov/frn/.*

| Producer/Exporter | Weighted-average margin (percentage) |
|---|---|
| Akzo Nobel Functional Chemicals B.V. ..... | 0.00 |

**Assessment Rates**

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in this review, in accordance with 19 CFR 351.212(b). The Department intends to issue assessment instructions directly to CBP 15 days after publication of these final results of review. Because we have calculated a zero margin for Akzo Nobel in the final results of this review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[3] This clarification applies to entries of subject merchandise during the POR produced and exported by Akzo Nobel for which it did not know that the merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate effective during the POR if there is no rate for the intermediate company(ies) involved in the transaction.[4]

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Akzo Nobel will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous review or in the less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the investigation, the cash-deposit rate will continue to be the all-others rate of 14.57 percent, which is the all-others rate established by the Department in the LTFV investigation.[5] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Reimbursement of Duties**

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

**Administrative Protective Order**

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

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

Dated: December 18, 2014.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2014–30547 Filed 12–29–14; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

[4] *See Assessment Policy Notice* for a full discussion of this clarification.

[5] *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden,* 70 FR 39734, 39735 (July 11, 2005).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–520–804]**

### Certain Steel Nails from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2011–2013

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

**SUMMARY:** On June 24, 2014, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain steel nails from the United Arab Emirates (UAE). The period of review (POR) is November 3, 2011, through April 30, 2013. The review covers two producers/exporters of the subject merchandise, Dubai Wire FZE (Dubai Wire) and Precision Fasteners, L.L.C. (Precision). For these final results, we continue to find subject merchandise has been sold in the United States at less than normal value.

**DATES:** *Effective Date:* December 30, 2014.

**FOR FURTHER INFORMATION CONTACT:** Bryan Hansen or Michael Romani, 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) 482–3683 or (202) 482–0198, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 24, 2014, the Department published the preliminary results of the administrative review of the antidumping duty order on certain steel nails from the United Arab Emirates.[1] On September 30, 2014, we extended the due date for the final results to December 22, 2014.[2] On October 16, 2014, we issued a post-preliminary analysis finding that: (i) Dubai Wire's affiliated [3] importer, Itochu Building Products Inc., and affiliated [4] distributor, PrimeSource Building Products Inc., (collectively, IBP) employed an acceptable constructed export price (CEP) sales reporting methodology; (ii) certain submissions by Dubai Wire accompanied by certifications signed by a representative of IBP meet the requirements of 19 CFR 351.303(g); (iii) it was appropriate to rely on facts available without an

[1] *See Certain Steel Nails From the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2011–2013,* 79 FR 35721 (June 24, 2014) (*Preliminary Results*).

[2] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations ''Certain Steel Nails from the United Arab Emirates: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review; 2011–2013'' dated September 30, 2014.

[3] For details on our affiliation determination, *see* Memorandum to Thomas Gilgunn, Office Director, AD/CVD Operations, Office I, ''Certain Steel Nails from the United Arab Emirates—Affiliation Memorandum for Dubai Wire FZE'' dated May 28, 2014.

[4] *Id.*

adverse inference with respect to certain reported CEP sales data; and (iv) using the revised export price (EP) and CEP databases, we recalculated Dubai Wire's margin.[5]

We invited interested parties to comment on the *Preliminary Results* and Post-Preliminary Results. We received case briefs from Mid Continent Steel & Wire, Inc. (the petitioner), and IBP on October 31, 2014, concerning Dubai Wire. These parties submitted rebuttal comments on November 5, 2014. We received no case or rebuttal briefs concerning Precision. A hearing was requested by IBP, but that request was later withdrawn.

The Department conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

## Scope of the Order

The merchandise subject to the *Order*[6] is certain steel nails from the UAE. The products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, and 7317.00.75. The HTSUS numbers are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.[7]

## Analysis of the Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. A list of the issues which parties have raised and to which we have responded is in the Issues and Decision Memorandum and attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and it is available to all parties in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.*

## Changes Since the Preliminary Results

Based on our analysis of the comments received, we made certain revisions to the weighted-average dumping margin calculation for Dubai Wire, which we included in the Post-Preliminary Results, where applicable. A detailed discussion of each change made is in the company-specific analysis memorandum dated concurrently with this notice, which is on file electronically *via* ACCESS and in the CRU of the main Commerce building.[8] No changes have been made with respect to our determination for Precision.

## Final Results of the Review

We determine that the following weighted-average dumping margins exist for the period November 3, 2011, through April 30, 2013:

| Company | Weighted-average dumping margin (percent) |
|---|---|
| Dubai Wire FZE | 18.13 |
| Precision Fasteners, L.L.C. | 184.41 |

## Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. In accordance with 19 CFR 351.212(b)(1), for Dubai Wire, we calculated an importer- (or customer-) specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for an importer's examined sales and the total entered value of such sales. We have continued to rely on adverse facts available to establish Precision's weighted-average dumping margin in these final results, and therefore, we will instruct CBP to apply an *ad valorem* assessment rate of 184.41 percent to all entries of subject merchandise during the POR which were produced and/or exported by Precision. We will instruct CBP to take into account the ''provisional measures cap'' in accordance with 19 CFR 351.212(d).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[9] This clarification will apply to entries of subject merchandise during the POR produced by Dubai Wire for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

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

## Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of certain steel nails from the UAE entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Dubai Wire and Precision will be the rates established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the manufacturer of the merchandise for the most recently completed segment of this proceeding; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.30 percent.[10] These cash deposit requirements, when imposed, shall remain in effect until further 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 antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

[5] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance ''Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates—Post-Preliminary Results Analysis Memorandum; 2011–2013'' dated October 16, 2014 (Post-Preliminary Results).

[6] *See Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27421 (May 10, 2012) (*Order*).

[7] For a full description of the scope of the order, *See* the memorandum from Deputy Assistant Secretary Christian Marsh to Assistant Secretary Paul Piquado entitled ''Certain Steel Nails from the United Arab Emirates: Issues and Decision Memorandum for Final Results of Antidumping Duty Administrative Review; 2011–2013'' dated concurrently with and hereby adopted by this notice (Issues and Decision Memorandum).

[8] *See* the company-specific final analysis memorandum for Dubai Wire dated concurrently with this notice.

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

[10] The all-others rate established in the *Order.*

This notice also 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 351.305(a)(3). Timely written notification of the return or the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

The final results of this administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 22, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

I. Summary
II. Background
III. Scope of the Order
IV. Facts Available
V. Discussion of the Issues
Comment 1: Dubai Wire Affiliation
Comment 2: Non-Dubai Wire Company Certifications
Comment 3: Dubai Wire Third-Country Market Viability
Comment 4: IBP's Data Reporting Methodology
Comment 5: Commissions in the United States
Comment 6: Freight Revenue Cap
Comment 7: Quantity Adjustments
VI. Recommendation

[FR Doc. 2014–30541 Filed 12–29–14; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–017]**

### Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Amended Affirmative Preliminary Determination

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

**SUMMARY:** The Department of Commerce (the Department) is amending the *Preliminary Determination* of the countervailing duty (CVD) investigation of passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (PRC) to correct significant ministerial errors with respect to our *Preliminary Determination.*[1] We are also amending the scope of the investigation in response to comments submitted following the publication of the *Preliminary Determination.* The period of investigation is January 1, 2013, through December 31, 2013.

**DATES:** *Effective Date:* December 30, 2014.

**FOR FURTHER INFORMATION CONTACT:** Emily Halle or Jason Rhoads, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202.482.0176, 202.482.0123, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

The Department announced its *Preliminary Determination* on November 24, 2014, and disclosed to interested parties the calculations for the *Preliminary Determination* on November 25, 2014. The *Preliminary Determination* was published on December 1, 2014. GITI Tire (Fujian) Co., Ltd. (GITI Fujian) submitted ministerial error allegations on December 1, 2014, alleging that the Department made certain significant errors in the *Preliminary Determination.* On December 2, 2014, CTP Transportation Products, LLC and Carlisle (Meizhou) Rubber Products Co. Ltd. (CTP) submitted comments regarding the preliminary scope.[2] Petitioner[3] submitted rebuttal comments to CTP's submission regarding the preliminary scope on December 5, 2014.[4] Parties submitted additional comments on the preliminary scope through December 15, 2014.[5] After reviewing the allegations, we determine that the *Preliminary Determination* included significant ministerial errors with respect to the calculation of certain sales denominators, and the benefit calculation for one company under the ''Government Policy Lending'' program. We are also modifying the scope of the investigation by temporarily suspending certain marking requirements for exclusion of specialty tires in response to comments raised by interested parties.

### Analysis of Significant Ministerial Error Allegations

A ministerial error is defined in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' With respect to preliminary determinations in investigations, 19 CFR 351.224(e) provides that the Department ''will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination. . .'' A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in: (1) A change of at least five absolute percentage points in, but not less than 25 percent of, the countervailable subsidy rate calculated in the original (erroneous) preliminary determination; or (2) a difference between countervailable subsidy rate of zero (or *de minimis*) and a countervailable subsidy rate of greater than *de minimis,* or vice versa.[6]

As explained further in the Ministerial Error Memorandum issued concurrently with this Notice,[7] we

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[1] *See Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Preliminary Affirmative Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination,* 79 FR 71093 (December 1, 2014) (*Preliminary Determination*).

[2] *See* Letter from CTP, ''Certain Passenger Vehicle and Light Truck Tires from China: Request for Meeting,'' December 2, 2014 (CTP Scope Comments).

[3] Collectively, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, and AFL–CIO, CLC.

[4] *See* Letter from Petitioner, ''Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China—Scope of the Investigations, Petitioner's Opposition to CTP's Exclusion Request,'' December 5, 2014 (Petitioner Rebuttal to CTP Comments).

[5] *See* Letter from CTP, ''Certain Passenger Vehicle and Light Truck Tires from China: Unconstitutional Burdens on Speech Created by Implementation of the Department's Preliminary Affirmative Countervailing Duty Determination,'' December 9, 2014; Letter from CTP, ''Certain Passenger Vehicle and Light Truck Tires from China: Response to Petitioner's Opposition to CTP's Exclusion Request,'' December 9, 2014; Letter from Petitioner, ''Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China—Scope of the Investigations, Petitioner's Reply to CTP's Response on Scope and Comments on Unconstitutional Burden,'' December 11, 2014; Letter from CTP, ''Certain Passenger Vehicle and Light Truck Tires from China: Unconstitutional Burdens on Speech Created by Implementation of the Department's Preliminary Affirmative Countervailing Duty Determination,'' December 11, 2014; Letter from Petitioner, ''Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China—Scope of the Investigations, Petitioner's Second Reply to CTP's Comments on Unconstitutional Burden,'' December 15, 2014.

[6] *See* 19 CFR 351.224(g).

[7] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, ''Allegation of Significant Ministerial

determine that the *Preliminary Determination* contained errors with respect to our calculation of GITI Fujian's subsidy rate. Correction of these errors results in a determination that changes GITI Fujian's subsidy rate by at least five absolute percentage points and more than 25 percent of the original (incorrect) rate. The Department considers these ministerial errors to be significant, warranting an amendment to our *Preliminary Determination* with respect to GITI Fujian.

**Amendment of the Scope of the Investigation To Suspend Certain Marking Requirements**

The scope of the investigation issued in the *Preliminary Determination* contained several exclusions. We are amending the preliminary requirements to qualify for the exclusion for specialty tires in order to address comments made by interested parties regarding the exclusion of specialty tires from the scope of the investigation. Specifically, CTP submitted comments in response to the *Preliminary Determination* arguing that implementing the scope exclusion requirements for trailer tires effective immediately would impose substantial burdens on exporters currently producing trailer tires in adherence with industry practices.[8] Petitioner in this investigation submitted rebuttal comments arguing that the scope exclusion requirements are necessary to prevent circumvention of cash deposit requirements by exporters of passenger tires.[9] After considering the parties' comments, the Department has preliminarily determined that imposing certain marking requirements in the specialty tire exclusion (exclusion ''(6)'') in the scope of the *Preliminary Determination* is not warranted because imposition of these requirements could result in the payment of cash deposits on merchandise that Petitioner may not have intended to be included in the scope of the investigation. Accordingly, we have determined to suspend the requirements for load index and speed rating markings (exclusion (6)(d) and (6)(e)).[10] We are retaining the other sidewall markings for the exclusion of specialty tires, namely the ''DOT'' designation, the prefix ''ST,'' and the disclaimer ''For Trailer Service Only'' or ''For Trailer Use Only''. The record indicates that these markings are generally included on tire sidewalls as part of current industry practice.[11] We find that retaining these requirements is administrable and provides sufficient protection from possible evasion during this investigation, without placing an undue burden on acknowledged trailer tire producers (*i.e.,* producers of non-subject merchandise) such as CTP. We note that it is the Department's current intent to retain the marking requirements for exclusion 6(d) and (e) in its final determinations in the CVD and antidumping duty investigations. However, interested parties will have the opportunity to address the necessity of these requirements or any amendments thereto, including the threshold speed requirement and associated markings, in case and rebuttal briefs for the Department's consideration before the final determinations in the CVD and antidumping duty investigations. For a full description of the amended scope of this investigation, *see* ''Scope of Investigation'' at the Appendix of this notice.

**Suspension of Liquidation**

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an amended estimated countervailable subsidy rate for GITI Fujian.[12] In the *Preliminary Determination,* we calculated an all-others rate using a weight average of the two responding firms' rates (*i.e.,* GITI Fujian and Cooper Kunshan Tire Co., Ltd). Therefore, we are also amending the all-others rate to incorporate GITI Fujian's amended rate in the weight average of the responding firms' rate, using publicly-ranged data. The overall amended preliminary estimated countervailable subsidy rates are summarized in the table below.

| Exporter/producer | Subsidy rate (percent) |
|---|---|
| GITI Tire (Fujian) Co., Ltd. and certain cross-owned companies | 11.74 |
| All Others | 12.03 |

We will instruct U.S. Customs and Border Protection (CBP) to require a cash deposit equal to the estimated amended countervailing duty rates reflected in this notice for GITI Fujian and all-other exporters or producers. This amended countervailing duty rate applies to GITI Fujian for all entries of passenger tires from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of the *Preliminary Determination.* We are not changing our *Preliminary Determination* regarding critical circumstances. Therefore, we will direct CBP to apply the all-others amended preliminary countervailing duty rate to any unliquidated entries entered, or withdrawn from warehouse for consumption for all-other exporters or producers not individually examined, on or after the date which is 90 days prior to the date of publication of the *Preliminary Determination,* in accordance with section 703(e)(2)(A) of the Act.

**International Trade Commission Notification**

In accordance with section 703(f) of the Act, we will notify the International Trade Commission (ITC) of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.224(e).

Errors in the Preliminary Determination of the Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China,'' dated concurrently with this notice, for the analysis performed (Ministerial Error Memorandum). This memorandum is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Department's Central Records Unit in Room 7046 of the Department of Commerce building.

[8] *See* CTP Scope Comments.

[9] *See* Petitioner Rebuttal to CTP Comments.

[10] *See* ''Scope of Investigation'' at the Appendix of this Notice (''(d) the load index molded on the tire's sidewall meets or exceeds those load indexes listed in the *Tire and Rim Association Year Book* for the relevant ST tire size, and (e) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by TRA, and the rated speed does not exceed 81 MPH or an ''M'' rating;'').

[11] *See, e.g.,* Letter from the China Manufacturer's Alliance LLC, ''CMA's Scope Comments Certain Passenger Vehicle and Light Truck Tires from China,'' August 11, 2014, at 6; Letter from Recreation Vehicle Industry Association, ''Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Scope Comments,'' August 8, 2014; Letter from CTP, ''Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China—Comments on Scope,'' August 11, 2014. Additionally, we agree with Petitioner that based on evidence provided by CTP, CTP's trailer tires not marked with ''ST'' would not be included in the scope because they do not meet the numerical size designations listed in the passenger car section or light truck section of the *Tire and Rim Association Year Book, see* Petitioner Rebuttal to CTP Comments at 3.

[12] The countervailable rate for GITI Fujian applies also to its cross-owned affiliated companies GITI Tire (China) Investment Company Ltd., GITI Radial Tire (Anhui) Company Ltd., GITI Tire (Hualin) Company Ltd., GITI Steel Cord (Hubei) Company Ltd., and Anhui Prime Cord Fabrics Company Ltd.

Dated: December 19, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix—Scope of Investigation

The scope of this investigation is passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by this investigation may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market.

Subject tires have, at the time of importation, the symbol ''DOT'' on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have the following prefixes or suffix in their tire size designation, which also appears on the sidewall of the tire:

Prefix designations:

P—Identifies a tire intended primarily for service on passenger cars

LT—Identifies a tire intended primarily for service on light trucks

Suffix letter designations:

LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service

All tires with a ''P'' or ''LT'' prefix, and all tires with an ''LT'' suffix in their sidewall markings are covered by this investigation regardless of their intended use.

In addition, all tires that lack a ''P'' or ''LT'' prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the passenger car section or light truck section of the *Tire and Rim Association Year Book,* as updated annually, unless the tire falls within one of the specific exclusions set out below.

Passenger vehicle and light truck tires, whether or not attached to wheels or rims, are included in the scope. However, if a subject tire is imported attached to a wheel or rim, only the tire is covered by the scope.

Specifically excluded from the scope of this investigation are the following types of tires:

(1) racing car tires; such tires do not bear the symbol ''DOT'' on the sidewall and may be marked with ''ZR'' in size designation;

(2) new pneumatic tires, of rubber, of a size that is not listed in the passenger car section or light truck section of the *Tire and Rim Association Year Book;*

(3) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires;

(4) non-pneumatic tires, such as solid rubber tires;

(5) tires designed and marketed exclusively as temporary use spare tires for passenger vehicles which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire's sidewall are listed in Table PCT–1B (''T'' Type Spare Tires for Temporary Use on Passenger Vehicles) of the *Tire and Rim Association Year Book,*

(b) the designation ''T'' is molded into the tire's sidewall as part of the size designation, and,

(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by *Tire and Rim Association Year Book,* and the rated speed is 81 MPH or a ''M'' rating;

(6) tires designed and marketed exclusively for specialty tire (ST) use which, in addition, exhibit each of the following physical characteristics: *

(a) the size designation molded on the tire's sidewall is listed in the ST sections of the *Tire and Rim Association Year Book,*

(b) the designation ''ST'' is molded into the tire's sidewall as part of the size designation,

(c) the tire incorporates a warning, prominently molded on the sidewall, that the tire is ''For Trailer Service Only'' or ''For Trailer Use Only'',

(d) the load index molded on the tire's sidewall meets or exceeds those load indexes listed in the *Tire and Rim Association Year Book* for the relevant ST tire size, and

(e) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by TRA, and the rated speed does not exceed 81 MPH or an ''M'' rating;

(7) tires designed and marketed exclusively for off-road use and which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire's sidewall are listed in the off-the-road, agricultural, industrial or ATV section of the *Tire and Rim Association Year Book,*

(b) in addition to any size designation markings, the tire incorporates a warning, prominently molded on the sidewall, that the tire is ''Not For Highway Service'' or ''Not for Highway Use'',

(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the *Tire and Rim Association Year Book,* and the rated speed does not exceed 55 MPH or a ''G'' rating, and

(d) the tire features a recognizable off-road tread design.

The products covered by the investigation are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.45.10, 4011.99.45.50, 4011.99.85.10, 4011.99.85.50, 8708.70.45.45, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

* We are currently suspending requirements (6)(d) and (e); therefore, tires entered, or withdrawn from warehouse for consumption that meet exclusion requirements (6)(a)–(c) above are excluded from the scope of this investigation.

[FR Doc. 2014–30544 Filed 12–29–14; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD691**

### Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program; 2015 Cost Recovery

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

**ACTION:** Notice; 2015 cost recovery fee percentages and mothership (MS) pricing.

**SUMMARY:** This action provides participants in the Pacific coast groundfish trawl rationalization program with the 2015 fee percentages and MS pricing needed to calculate the required payments for cost recovery fees due in 2015.

For calendar year 2015, NMFS announces the following fee percentages by sector: 3.0 percent for the Shorebased Individual Fishing Quota (IFQ) Program, 1.2 percent for the MS Coop Program, 0.0 percent for the Catcher Processor (C/P) Coop Program.

For 2015, the MS pricing to be used as a proxy by the C/P Coop Program is: $0.13/lb for Pacific whiting.

**DATES:** Effective January 1, 2015.

**FOR FURTHER INFORMATION CONTACT:** Christopher Biegel, Cost Recovery Program Coordinator, (503) 231–6291, fax (503) 872–2737, email *Christopher.Biegel@NOAA.gov*.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires NMFS to collect fees to recover the costs directly related to the management, data collection, and enforcement of a limited access privilege program (LAPP) (16 U.S.C. 1854(d)(2)), also called ''cost recovery.'' The Pacific coast groundfish trawl rationalization program is a LAPP, implemented in 2011, and consists of three sectors: the Shorebased IFQ Program, the MS Coop Program, and the C/P Coop Program. In accordance with the MSA, and based on a recommended structure and methodology developed in coordination with the Pacific Fishery Management Council, NMFS collects

mandatory fees of up to three percent of the ex-vessel value of groundfish by sector (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program). NMFS collects the fees to recover the incremental costs of management, data collection, and enforcement of the trawl rationalization program. Beginning in January 2014, NMFS implemented cost recovery for the trawl rationalization program. Additional background can be found in the cost recovery proposed and final rules, 78 FR 7371 (February 1, 2013) and 78 FR 75268 (December 11, 2013), respectively. The details of cost recovery for the groundfish trawl rationalization program are in regulation at 50 CFR 660.115 (trawl fishery cost recovery program), § 660.140 (Shorebased IFQ Program), § 660.150 (MS Coop Program), and § 660.160 (C/P Coop Program).

The cost recovery program regulations require NMFS to announce, in a **Federal Register** document, the next year's applicable fee percentages and the applicable MS pricing for the C/P Coop Program. NMFS calculates and announces the fee percentage after each fiscal year ends, and before the fee would go into effect on January 1 of the following year. NMFS calculated the fee percentages by sector using the best available information. For 2015, the fee percentages by sector, which must not exceed three percent of the ex-vessel value of fish harvested, are:

- 3.0 percent for the Shorebased IFQ Program,
- 1.2 percent for the MS Coop Program,
- 0.0 percent for the C/P Coop Program.

To calculate the fee percentages, NMFS used the formula specified in regulation at § 660.115(b)(1), where the fee percentage by sector equals the lower of three percent or direct program costs (DPC) for that sector divided by total ex-vessel value (V) for that sector multiplied by 100.

''DPC'', as defined in the regulations at § 660.115(b)(1)(i), are the actual incremental costs for the previous fiscal year directly related to the management, data collection, and enforcement of each sector (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program). Actual incremental costs means those net costs that would not have been incurred but for the implementation of the trawl rationalization program, including both increased costs for new requirements of the program and reduced costs resulting from any program efficiencies. Similar to 2014, NMFS only included the cost of employees' time (salary and benefits) spent working on the program in calculating DPC rather than all incremental costs of management, data collection, and enforcement.

''V'', as specified at § 660.115(b)(1)(ii), is the total ex-vessel value for each sector from the previous calendar year. The ex-vessel value for each sector is further described in the definition section at § 660.111, and includes the total ex-vessel value for all groundfish species. For 2015, NMFS used the ex-vessel value for 2013 as reported in Pacific Fisheries Information Network (PacFIN) from electronic fish tickets to determine V. The electronic fish ticket data in PacFIN is for the Shorebased IFQ Program. Therefore, the ex-vessel value for both the MS Coop Program and the C/P Coop Program is a proxy based on the Shorebased IFQ Program ex-vessel price and on the retained catch estimates (weight) from the observer data for the MS and C/P Coop Programs.

Due to fluctuations in actual ex-vessel values and amounts landed, the amount NMFS collects each year in cost recovery fees can be over or under NMFS' costs from the previous fiscal year. Accordingly, the cost recovery regulations at § 660.115(b)(1)(i) state that if the amount of fees collected by NMFS is greater or less than the actual net incremental costs incurred, the DPC will be adjusted accordingly for the calculation of the fee percentage in the following year. For the IFQ and MS sectors, NMFS estimates the total fees that will be collected based on the collections up to the date of determination, as landings data have not been finalized when an adjustment is determined. However, NMFS has final data on the pounds of Pacific whiting harvested by the C/P Coop Program for 2014 and the price per pound that the C/P Coop Program participants used to calculate their 2014 fee (*i.e.*, $ 0.14 per pound as the ''MS pricing'' for 2014 reported in 78 FR 75268, 12/11/2013). With these data, NMFS can determine the fees that should be collected from C/P Coop Program participants. An adjustment ensures that the aggregate fees being collected are appropriate. In 2014 it is estimated that both the MS Coop and C/P Coop fisheries will have remitted fee amounts greater than the FY 2013 DPC used to calculate the 2014 fee percentages. As such the 2015 DPC will be adjusted as follows:

| | FY 2013 DPC used for 2014 calculation | 2014 Fees collected | Adjustment for 2015 |
|---|---|---|---|
| Shorebased IFQ Program | $1,877,752.00 | $1,356,285.28 | N/A |
| MS Coop Program | 274,936.05 | 331,004.07 | ($56,068.02) |
| C/P Coop Program | 176,460.05 | 350,387.25 | ($173,927.20) |

The DPC used to calculate the 2015 fee percentage for the Shorebased IFQ Program was already above the 3 percent cap before the adjustment and therefore the adjustment for 2015 would have no effect on the 2015 fee percentage and is not included. The adjustments for the MS Coop Program and C/P Coop program are included, and reduce the DPC values shown below in the fee percentage calculations for those two sectors.

The adjustment in the C/P Coop program costs shows that NMFS anticipates collecting $15,295.71 more than the adjusted costs in 2014 resulting in a fee percentage of -0.1. Because a fee percentage cannot be negative, NMFS is setting the 2015 C/P Coop program cost recovery fee at 0.0 percent and will deduct $15,295.71 from the 2015 DPC to adjust the 2016 fee percentage. The calculations, using the adjusted DPCs as described above, are as follows:

Shorebased IFQ Program—3.0% = the lower of 3% or ($2,028,859.04/$51,557,998) × 100

MS Coop Program—1.2% = the lower of 3% or ($233,300.78/$14,759,147) × 100

C/P Coop Program— −0.1% = the lower of 3% or ($ − 15,295.71/$22,233,966) × 100.

MS pricing is the MS Coop Program's average price per pound from the previous complete calendar year. The MS pricing will be used by the C/P Coop Program to determine their fee amount due (MS pricing multiplied by the value of the aggregate pounds of all groundfish species harvested by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the C/P fee percentage, equals the fee amount due). Similar to 2014, MS pricing for cost recovery is based on the

average price per pound of Pacific whiting as reported in PacFIN from the Shorebased IFQ Program. For 2015 MS pricing, NMFS used data from calendar year 2013. In other words, data from the IFQ fishery is used as a proxy for the MS average price per pound to determine the ''MS pricing'' used in the calculation for the C/P sector's fee amount due. In future years, NMFS may use values derived from those reported on the MS Coop Program cost recovery form from the previous calendar year, depending on what NMFS determines is the best information available. NMFS has calculated the 2015 MS pricing to be used as a proxy by the C/P Coop Program as: $0.13/lb for Pacific whiting.

Cost recovery fees are submitted to NMFS by Fish buyers via Pay.gov (*https://www.pay.gov/paygov/*). Fish buyers registered with Pay.gov can login in the upper left-hand corner of the screen. Fish buyers not registered with Pay.gov can go to the cost recovery forms directly from the Web site below. Click on the link to Pacific Coast Groundfish Cost Recovery for your sector (IFQ, MS, or C/P): *https://pay.gov/public/search/global?searchString=+groundfish+cost+recovery&formToken=6c80d7e6-a44c-4e9f-a4cc-eb7aa5000820*.

As stated in the preamble to the cost recovery proposed and final rules, in the spring of each year, NMFS will release an annual report documenting the details and data used for the above calculations. The report will include information such as the fee percentage calculation, program costs, and ex-vessel value by sector. The annual report for fishing year 2013 and calculation for 2014 is available at: *http://www.westcoast.fisheries.noaa.gov/publications/fishery_management/trawl_program/analytical%20docs/cost_recovery_annual_report_01.pdf*.

The annual report for fishing year 2014 and calculation for 2015 will be made available to the public electronically via the NMFS West Coast Region Groundfish Web site: *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/index.html*.

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

Dated: December 23, 2014.

**Alan D. Risenhoover,**

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

[FR Doc. 2014–30488 Filed 12–24–14; 11:15 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD686**

### North Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The North Pacific Fishery Management Council (NPFMC) will hold a Crab Modeling Workshop and a Crab Plan Team meeting. The workshop will be held January 13–15, 2015 with a Crab Plan Team meeting January 16, 2015.

**DATES:** The workshop will be held January 13–15, 2015, from 9 a.m. to 5 p.m. each day; The Crab Plan Team meeting will be held January 16, 2015, from 9 a.m. to 12 p.m.

**ADDRESSES:** Both meetings will be held at the Alaska Fishery Science Center AFSC, 7600 Sand Point Way NE., Bldg 4, Traynor Room, Seattle, WA.

*Council address:* North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Diana Stram; telephone: (907)271–2809.

**SUPPLEMENTARY INFORMATION:** The agenda includes:

*Modeling Workshop:* Work session on the development of the generic crab modeling framework (Gmacs). Goals are to communicate with and receive feedback from stock assessment authors on the development and application of the modeling framework for BSAI crab stocks. The Crab Plan Team meeting will review the stock assessment for Norton Sound Red King Crab and recommend the Overfishing Levels (OFL) and Acceptable Biological Catch (ABC) for 2015/16.

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org*.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: December 22, 2014.

**Tracey L. Thompson,**

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

[FR Doc. 2014–30413 Filed 12–29–14; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD662**

### Fisheries of the Gulf of Mexico and South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meetings

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

**ACTION:** Notice of SEDAR 39 assessment webinars for HMS Smoothhound Sharks.

**SUMMARY:** The SEDAR 39 assessment of HMS Smoothhound Sharks will consist of a series of webinars. This notice is for a webinar associated with the Assessment portion of the SEDAR process. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The assessment webinar for SEDAR 39 will be held on Friday, January 16, 2015, from 10 a.m. to 12 p.m., central time.

**ADDRESSES:**

*Meeting address:* The meeting will be held via webinar. The webinar is open to the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT** below) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

*SEDAR address:* 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Neer, SEDAR Coordinator; phone: (843) 571–4366; email: *julie.neer@safmc.net*.

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data

Workshop; and (2) a series of assessment webinars; and (3) Review Workshop. The product of the Data Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Webinar Process is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses; and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment Process webinars are as follows:

1. Using datasets and initial assessment analysis recommended from the Data Workshop, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Panelists will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

## Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: December 22, 2014.

**Tracey L. Thompson,**

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

[FR Doc. 2014–30281 Filed 12–29–14; 8:45 am]

BILLING CODE 3510–22–P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD687**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Tuesday, January 13, 2015 beginning at 9:30 a.m.

**ADDRESSES:**

*Meeting Address:* The meeting will be held at the Hilton Providence, 21 Atwells Ave., Providence, RI 02903.

*Council Address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

## Agenda Items

The New England Fishery Management Council's SSC's items for discussion will be: Planning for ABC recommendations needed by the Council in 2015; Discuss a process for dealing with ABC recommendations when recent assessment information is not available; Review & schedule the SSC meetings calendar for 2015 and discuss fishery performance indicators. Also on the agenda will be discussion about improvements to the SSC process. The committee will address other business as necessary.

Although non-emergency issues not contained in this agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

## Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: December 22, 2014.

**Tracey L. Thompson,**

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

[FR Doc. 2014–30414 Filed 12–29–14; 8:45 am]

BILLING CODE 3510–22–P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD676**

### South Atlantic Fishery Management Council; Public Meetings

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The South Atlantic Fishery Management Council (SAFMC) and Gulf of Mexico Fishery Management Council (GMFMC) will hold a meeting of their Joint Council Committee on South Florida Management Issues (Committee).

**DATES:** The Committee meeting will be held from 9 a.m. on Tuesday, January 13, 2015 until 12 noon on Thursday, January 15, 2015.

**ADDRESSES:**

*Meeting Address:* The meeting will be held at the Key West Marriott Beachside Hotel, 3841 N. Roosevelt Blvd., Key West, FL; phone: (305) 296–8100.

*South Atlantic Fishery Management Council Address:* South Atlantic Fishery

Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

*Gulf of Mexico Fishery Management Council Address:* 2203 N. Lois Ave., Suite 1100, Tampa, FL 33607.

**FOR FURTHER INFORMATION CONTACT:** Robert Mahood, Executive Director, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *Robert.mahood@safmc.net*.

**SUPPLEMENTARY INFORMATION:** The Committee will meet from 9 a.m. until 5 p.m. on January 13–14, 2015 and from 9 a.m. until 12 noon on January 15, 2015. The items of discussion are as follows:

The Committee will receive an update on the status of draft Amendment 35 to the Snapper Grouper Fishery Management Plan (FMP) for the South Atlantic that includes measures to remove black snapper, dog snapper, mahogany snapper, and schoolmaster from the FMP. The Committee will then review the Draft Joint Amendment to the FMP for the Reef Fish Resources of the Gulf of Mexico and the FMP for the Snapper Grouper Resources of the South Atlantic Region. The draft amendment is being developed by the Committee and includes actions to modify both the Gulf of Mexico Reef Fish FMP and the Snapper Grouper FMP for the South Atlantic. The draft amendment includes options to: delegate management of black grouper, mutton snapper and yellowtail snapper to the Florida Fish and Wildlife Conservation Commission (FWC); specify allocations of mutton snapper and black grouper to the State of Florida with bycatch allowances for other Gulf and South Atlantic states; modifications to the bag limit and commercial trip limits for mutton snapper in the Gulf of Mexico and South Atlantic; modify the black grouper bag limit and implement a recreational spawning season closure; specify accountability measures specifically for South Florida species (yellowtail snapper, mutton snapper and black grouper); modify the shallow-water grouper species compositions and seasonal closures in the Gulf of Mexico and South Atlantic; and options to modify the current circle hook requirements in the Gulf and South Atlantic.

The Committee will continue to review and modify the draft amendment. Additional presentations will be provided relative to the management boundaries and responsibility for hogfish, a progress report on speckled hind and warsaw grouper management, and the status of the goliath grouper stock assessment. The Committee will discuss these issues and provide recommendations.

Public comment will be accepted at the end of each meeting day. Written comments will be accepted prior the beginning of the Committee meeting and should be mailed to Robert Mahood, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29406 or emailed to *mike.collins@safmc.net.* Briefing materials will be posted on both the SAFMC Web site at *www.safmc.net* and the GMFMC Web site at *www.gulfcouncil.org* by January 7, 2015.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: December 22, 2014.

**Tracey L. Thompson,**

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

[FR Doc. 2014–30280 Filed 12–29–14; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD613**

### Marine Mammals; Issuance of Permits

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

**ACTION:** Notice; issuance of permits.

**SUMMARY:** Notice is hereby given that individuals and institutions have been issued Letters of Confirmation for activities conducted under the General Authorization for Scientific Research on marine mammals. See **SUPPLEMENTARY INFORMATION** for a list of names and addresses of recipients.

**ADDRESSES:** The Letters of Confirmation and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone: (301) 427–8401; fax: (301) 713–0376.

**FOR FURTHER INFORMATION CONTACT:** Office of Protected Resources, Permits and Conservation Division; phone: (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The requested Letters of Confirmation have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216). The General Authorization allows for bona fide scientific research that may result only in taking by level B harassment of marine mammals. The following Letters of Confirmation (LOC) were issued in Fiscal Year 2014.

*File No. 13549:* Issued to Moby A. Solangi, Ph.D., Institute for Marine Mammal Studies, P.O. Box 207, Gulfport, Mississippi 39502 on August 20, 2008, for transect surveys, aerial surveys, photo-identification, and behavioral observations of bottlenose dolphins (*Tursiops truncatus*) in estuaries of the Gulf of Mexico. The LOC was modified on October 31, 2013 to extend the duration of the LOC until December 20, 2013. This LOC was terminated on November 20, 2013, when a new LOC (File No. 18185) was issued to Dr. Solangi.

*File No. 18185:* Issued to Moby A. Solangi, Ph.D., Institute for Marine Mammal Studies, P.O. Box 207, Gulfport, Mississippi 39502 on November 20, 2013, for close approach via vessels during abundance surveys, photo-identification, behavioral observations, passive acoustics, and videography of bottlenose dolphins. The objectives of the research are to: (1) Ascertain population dynamics of bottlenose dolphins in the northern Gulf of Mexico, and (2) examine the dolphins' usage of different habitats, including lakes, bays, and sounds. Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*S. attenuata*), spinner dolphins (*S. longirostris*), and pygmy sperm whales (*Kogia breviceps*) may also be studied if sighted opportunistically. Occasional aerial surveys flown at 750 ft are also authorized. Research may occur in

Mississippi Sound, Chandeleur Sound, Breton Sound (including the Louisiana Marsh area), Lake Borgne, Lake Pontchartrain, Mobile Bay, and adjacent waters of the north central Gulf of Mexico. The LOC expires on November 30, 2018.

*File No. 18218:* Issued to the Dolphin Research Center [Responsible Party: Armando Rodriguez], 58901 Overseas Hwy., Grassy Key, FL 33050 on November 25, 2013, for close vessel approach, photo-identification, behavioral observations, and focal follows of bottlenose dolphins in the Middle Keys, FL. Specifically, the study area ranges from the southeast side of Lignumvitae Key to the northeast side of Pigeon Key, out to 2.5 miles offshore on the Atlantic side, and 5 miles offshore on the Gulf side. The objectives of the research are to: (1) Study population demographics in the Middle Keys, (2) augment two on-going photo-identification studies in the Lower Keys and Upper Keys, (3) contribute to the Gulf of Mexico Dolphin Identification System (GoMDIS), and (4) provide baseline information on this population. The LOC expires on November 30, 2018. On July 7, 2014, the LOC was modified to slightly expand the study area on the Gulf side of the Keys to include Bamboo and Tripod Banks. The LOC expires on November 30, 2018.

*File No. 14219:* Issued to Tara Cox, Ph.D., Savannah State University, PO Box 20467, Savannah, GA 31404 on February 23, 2009, to conduct close approach, photo-identification, behavioral observations, passive acoustics, and focal follows of coastal and offshore bottlenose dolphins, Atlantic and pantropical spotted dolphins, short-finned pilot whales (*Globicephela macrorhynchus*), beaked whales (*Mesoplodon* spp.*; Ziphius* spp.), and Risso's dolphins (*Grampus griseus*) in estuarine and coastal waters of Georgia and South Carolina. The research investigates foraging ecology, social structure, and population structure, including begging behaviors and interactions between bottlenose dolphins and shrimp trawls. On January 30, 2014, the expiration date of the LOC was extended until March 1, 2015. This LOC was subsequently terminated on February 28, 2014, when a new LOC (File No. 18605) was issued to Dr. Cox.

*File No. 13729:* Issued to the Wild Dolphin Project, 612 N. Orange Ave. Ste. #A–12, Jupiter, Florida 33458, on February 13, 2009. The LOC authorizes close approach, photo-identification, and behavioral observations of 13 cetacean species within the Intracoastal Waterway (ICW) from southern Martin County, FL to the Florida Keys, and in the adjacent Atlantic Ocean from the coast to 20 miles into the Gulf Stream. The objectives of the research are to: (1) Study abundance, distribution, and residency of bottlenose dolphins in the ICW of Palm Beach County, FL, (2) determine species diversity, abundance, and distribution of cetaceans offshore of Palm Beach County, FL, (3) study Atlantic spotted dolphins inhabiting waters along the Florida Keys and compare data with the Bahamas population. On February 24, 2014, the LOC was modified to extend the expiration date until February 28, 2015.

*File No. 18605:* Issued to Tara Cox, Ph.D., Savannah State University, PO Box 20467, Savannah, GA 31404 on February 28, 2014, to conduct close approach, photo-identification, behavioral observations, passive acoustics, and focal follows of coastal and offshore bottlenose dolphins, Atlantic and pantropical spotted dolphins, short-finned pilot whales, beaked whales, and Risso's dolphins in estuarine and coastal waters of Georgia and South Carolina. The study is designed to continue research on dolphin-human interactions related to coastal fisheries, foraging ecology, and social structure of the local bottlenose dolphins. The LOC expires on March 1, 2019.

*File No. 14590:* Issued to the National Marine Mammal Laboratory [Principal Investigator: Peter Boveng, Ph.D.], 7600 Sand Point Way NE., Seattle, WA 98115, on July 24, 2009. The LOC authorizes aerial surveys of harbor seals (*Phoca vitulina richardii*), harbor porpoise (*Phocoena phocoena*), gray whales (*Eschrichtius robustus*), beluga whales (*Delphinapterus leuca*), and killer whales (*Orcinus orca*) along the entire coast of Alaska south of Cape Newenham, at the northern end of Bristol Bay. The results of the surveys form the basis of the NMFS Stock Assessment Reports and provide information on the haul-out behavior and habitat requirements of harbor seals in Alaska. On April 14, 2014, the expiration date of the LOC was extended until August 1, 2015.

*File No. 18715:* Issued to William McGlaun, Texas Sealife Center, 14220 South Padre Island Drive, TX 78418 on June 26, 2014, for close vessel approach, photo-identification, and behavioral observations of bottlenose dolphins to estimate population abundance in south and central Texas. Specifically, the study area includes the internal bays and estuaries along the Texas Coast form Keller Bay to South Bay. The LOC expires on July 1, 2019.

*File No. 18859:* Issued to the National Ocean Service Center for Coastal Environmental Health and Biomolecular Research [Responsible Party: Patricia A. Fair, Ph.D.], 219 Fort Johnson Rd., Charleston, SC 29412, on August 25, 2014, for close vessel approach, photo-identification, behavioral observations, and focal follows of bottlenose dolphins. The studies may occur in the Charleston Harbor area, primarily in portions of the main channels and creeks of the Ashley, Cooper, and Wando Rivers. The research will continue monitoring dolphins in the area with the objective of analyzing their site fidelity and local contaminant exposure. In addition, the study will quantify the effects of a 2016 harbor deepening project on the dolphins' distribution, abundance and behavior. The LOC expires on August 31, 2019.

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

Dated: December 16, 2014.

**Julia Harrison,**

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

[FR Doc. 2014–30398 Filed 12–29–14; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XX47**

### Marine Mammals; File No. 14097

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

**ACTION:** Notice; issuance of permit amendment.

**SUMMARY:** Notice is hereby given that a major amendment to Permit No. 14097–04 has been issued to the National Marine Fisheries Service, Southwest Fisheries Science Center (SWFSC) (Responsible Party: Lisa Ballance, Ph.D.), Protected Resources Division, 8901 La Jolla Shores Drive, La Jolla, CA 92037.

**ADDRESSES:** The permit amendment and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver

Spring, MD 20910; phone: (301) 427–8401; fax (301) 713–0376.

**FOR FURTHER INFORMATION CONTACT:** Amy Hapeman or Courtney Smith, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** On April 2, 2014 notice was published in the **Federal Register** (79 FR 18527) that a request for an amendment to Permit No. 14097–03 to conduct research on humpback whales (*Megaptera novaeangliae*), had been submitted by the above-named organization. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 14097–05 authorizes the SWFSC to conduct scientific research on five pinniped species, 57 cetacean species, and five sea turtle species in U.S. territorial and international waters of the Pacific, Southern, Indian, and Arctic Oceans for three projects. Cetacean surveys are conducted to determine the abundance, distribution, movement patterns, and stock structure of cetaceans. These studies are conducted through vessel surveys, aerial surveys, small plane photogrammetry, photo-identification, biological sampling, radio tagging, and satellite tagging. The amendment to the permit authorizes: (1) A subset of humpback whales to be biopsy sampled multiple times annually in the Southern Ocean, and (2) extends the duration of the permit by 12 months. The permit amendment is valid through June 30, 2016.

A supplemental environmental assessment (SEA) analyzing the effects of the permitted activities on the human environment was prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) for the permit. Based on the analysis in the SEA, NMFS determined that issuance of the amended permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on December 17, 2014.

As required by the ESA, issuance of the permit amendment was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 22, 2014.

**Julia Harrison,**

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

[FR Doc. 2014–30394 Filed 12–29–14; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Addition and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to and Deletions from the Procurement List.

**SUMMARY:** This action adds a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

**DATES:** *Effective Date:* 1/29/2015

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

**FOR FURTHER INFORMATION CONTACT:** Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:**

### Addition

On 11/21/2014 (79 FR 69434–69435), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the services and impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. The action will result in authorizing a small entity to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

### End of Certification

Accordingly, the following service is added to the Procurement List:

**Service**

*Service Type/Location:* Grounds Maintenance Service, US Coast Guard, Townsends Inlet Recreational Facility, 8101 Landis Avenue, Sea Isle City, NJ.

*NPA:* Fedcap Rehabilitation Services, Inc., New York, NY.

*Contracting Activity:* Dept of Homeland Security, U.S. Coast Guard, Base Portsmouth, Portsmouth, VA.

### Deletions

On 11/21/2014 (79 FR 69434–69435), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products deleted from the Procurement List.

### End of Certification

Accordingly, the following products are deleted from the Procurement List:

*Products*

**Microfibers Kitchen Towels and Cloths**

*NSN:* MR 939—Set, Cleaning, Microfiber, Leaf Print, 2 Piece
*NPA:* New York City Industries for the Blind, Inc., Brooklyn, NY (Deleted)
*Contracting Activity:* Defense Commissary Agency, Fort Lee, VA

**Disk, Flexible**

*NSN:* 7045–01–283–4362
*NPA:* North Central Sight Services, Inc., Williamsport, PA
*Contracting Activity:* Defense Logistics Agency Troop Support, Philadelphia, PA

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. 2014–30338 Filed 12–29–14; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to delete products from the Procurement List that were previously furnished by the nonprofit agency employing persons who are blind or have other severe disabilities.

*Comments Must Be Received on Or Before:* 1/29/2015.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

*For Further Information or To Submit Comments Contact:* Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

**Deletions**

The following products are proposed for deletion from the Procurement List:

*Products*

Shirt, Flyers, Midweight, Fire Resistant, MPS, Navy, Men's, Black

*NSN:* 8415–00–NSH–0504—XSR
*NSN:* 8415–00–NSH–0505—SR
*NSN:* 8415–00–NSH–0506—MR
*NSN:* 8415–00–NSH–0507—LR
*NSN:* 8415–00–NSH–0508—XLR
*NSN:* 8415–00–NSH–0766—X Small Short
*NSN:* 8415–00–NSH–0767—X Small Long
*NSN:* 8415–00–NSH–0768—Small Short
*NSN:* 8415–00–NSH–0769—Small Long
*NSN:* 8415–00–NSH–0770—Medium Short
*NSN:* 8415–00–NSH–0771—Medium Long
*NSN:* 8415–00–NSH–0772—Large Short
*NSN:* 8415–00–NSH–0773—Large Long
*NSN:* 8415–00–NSH–0774—X Large Short
*NSN:* 8415–00–NSH–0775—X Large Long

Drawers, Flyers, Midweight, Fire Resistant, MPS, Navy, Men's, Long, Black

*NSN:* 8415–00–NSH–0509–, XSR
*NSN:* 8415–00–NSH–0510—SR
*NSN:* 8415–00–NSH–0511—MR
*NSN:* 8415–00–NSH–0512—LR
*NSN:* 8415–00–NSH–0513—XLR
*NSN:* 8415–00–NSH–0776—X Small Short
*NSN:* 8415–00–NSH–0777—X Small Long
*NSN:* 8415–00–NSH–0778—Small Short
*NSN:* 8415–00–NSH–0779—Small Long
*NSN:* 8415–00–NSH–0780—Medium Short
*NSN:* 8415–00–NSH–0781—Medium Long
*NSN:* 8415–00–NSH–0782—Large Short
*NSN:* 8415–00–NSH–0783—Large Long
*NSN:* 8415–00–NSH–0784—X Large Short
*NSN:* 8415–00–NSH–0785—X Large Long

Shirt, Flyers, Midweight, Fire Resistant, MPS, Navy, Women's, Black

*NSN:* 8415–00–NSH–0786—X Small Short
*NSN:* 8415–00–NSH–0787—X Small Regular
*NSN:* 8415–00–NSH–0788—X Small Long
*NSN:* 8415–00–NSH–0789—Small Short
*NSN:* 8415–00–NSH–0790—Small Regular
*NSN:* 8415–00–NSH–0791—Small Long
*NSN:* 8415–00–NSH–0792—Medium Short
*NSN:* 8415–00–NSH–0793—Medium Regular
*NSN:* 8415–00–NSH–0794—Medium Long
*NSN:* 8415–00–NSH–0795—Large Short
*NSN:* 8415–00–NSH–0796—Large Regular
*NSN:* 8415–00–NSH–0797—Large Long
*NSN:* 8415–00–NSH–0798—X Large Short
*NSN:* 8415–00–NSH–0799—X Large Regular
*NSN:* 8415–00–NSH–0800—X Large Long

Drawers, Power Stretch Underwear, MPS, Army, Women's, Sage Green

*NSN:* 8415–00–NSH–0801—X Small Short
*NSN:* 8415–00–NSH–0802—X Small Regular
*NSN:* 8415–00–NSH–0803—X Small Long
*NSN:* 8415–00–NSH–0804—Small Short
*NSN:* 8415–00–NSH–0805—Small Regular
*NSN:* 8415–00–NSH–0806—Small Long
*NSN:* 8415–00–NSH–0807—Medium Short
*NSN:* 8415–00–NSH–0808—Medium Regular
*NSN:* 8415–00–NSH–0809—Medium Long
*NSN:* 8415–00–NSH–0810—Large Short
*NSN:* 8415–00–NSH–0811—Large Regular
*NSN:* 8415–00–NSH–0812—Large Long
*NSN:* 8415–00–NSH–0813—X Large Short
*NSN:* 8415–00–NSH–0814—X Large Regular
*NSN:* 8415–00–NSH–0815—X Large Long
*NPA:* DEAUTHORIZE NPA
*Contracting Activity:* Dept of the Navy, U.S. Fleet Forces Command, Norfolk, VA

Shirt, Flyers, Midweight, Fire Resistant, MPS, Navy, Men's, Black

*NSN:* 8415–00–NSH–0504—XSR
*NSN:* 8415–00–NSH–0505—SR
*NSN:* 8415–00–NSH–0506—MR
*NSN:* 8415–00–NSH–0507—LR
*NSN:* 8415–00–NSH–0508—XLR
*NSN:* 8415–00–NSH–0766—X Small Short
*NSN:* 8415–00–NSH–0767—X Small Long
*NSN:* 8415–00–NSH–0768—Small Short
*NSN:* 8415–00–NSH–0769—Small Long
*NSN:* 8415–00–NSH–0770—Medium Short
*NSN:* 8415–00–NSH–0771—Medium Long
*NSN:* 8415–00–NSH–0772—Large Short
*NSN:* 8415–00–NSH–0773—Large Long
*NSN:* 8415–00–NSH–0774—X Large Short
*NSN:* 8415–00–NSH–0775—X Large Long

Drawers, Flyers, Midweight, Fire Resistant, MPS, Navy, Men's, Long, Black

*NSN:* 8415–00–NSH–0509—XSR
*NSN:* 8415–00–NSH–0510—SR
*NSN:* 8415–00–NSH–0511—MR
*NSN:* 8415–00–NSH–0512—LR
*NSN:* 8415–00–NSH–0513—XLR
*NSN:* 8415–00–NSH–0776—X Small Short
*NSN:* 8415–00–NSH–0777—X Small Long

*NSN:* 8415–00–NSH–0778—Small Short
*NSN:* 8415–00–NSH–0779—Small Long
*NSN:* 8415–00–NSH–0780—Medium Short
*NSN:* 8415–00–NSH–0781—Medium Long
*NSN:* 8415–00–NSH–0782—Large Short
*NSN:* 8415–00–NSH–0783—Large Long
*NSN:* 8415–00–NSH–0784—X Large Short
*NSN:* 8415–00–NSH–0785—X Large Long

Shirt, Flyers, Midweight, Fire Resistant, MPS, Navy, Women's, Black

*NSN:* 8415–00–NSH–0786—X Small Short
*NSN:* 8415–00–NSH–0787—X Small Regular
*NSN:* 8415–00–NSH–0788—X Small Long
*NSN:* 8415–00–NSH–0789—Small Short
*NSN:* 8415–00–NSH–0790—Small Regular
*NSN:* 8415–00–NSH–0791—Small Long
*NSN:* 8415–00–NSH–0792—Medium Short
*NSN:* 8415–00–NSH–0793—Medium Regular
*NSN:* 8415–00–NSH–0794—Medium Long
*NSN:* 8415–00–NSH–0795—Large Short
*NSN:* 8415–00–NSH–0796—Large Regular
*NSN:* 8415–00–NSH–0797—Large Long
*NSN:* 8415–00–NSH–0798—X Large Short
*NSN:* 8415–00–NSH–0799—X Large Regular
*NSN:* 8415–00–NSH–0800—X Large Long

Drawers, Power Stretch Underwear, MPS, Army, Women's, Sage Green

*NSN:* 8415–00–NSH–0801—X Small Short
*NSN:* 8415–00–NSH–0802—X Small Regular
*NSN:* 8415–00–NSH–0803—X Small Long
*NSN:* 8415–00–NSH–0804—Small Short
*NSN:* 8415–00–NSH–0805—Small Regular
*NSN:* 8415–00–NSH–0806—Small Long
*NSN:* 8415–00–NSH–0807—Medium Short
*NSN:* 8415–00–NSH–0808—Medium Regular
*NSN:* 8415–00–NSH–0809—Medium Long
*NSN:* 8415–00–NSH–0810—Large Short
*NSN:* 8415–00–NSH–0811—Large Regular
*NSN:* 8415–00–NSH–0812—Large Long
*NSN:* 8415–00–NSH–0813—X Large Short
*NSN:* 8415–00–NSH–0814—X Large Regular
*NSN:* 8415–00–NSH–0815—X Large Long

*NPA:* DEAUTHORIZE NPA

*Contracting Activity:* Dept of the Army, W40M Northern Region Contracting Office, Fort Belvoir, VA

**Barry S. Lineback,**
*Director, Business Operations.*

[FR Doc. 2014–30339 Filed 12–29–14; 8:45 am]
BILLING CODE 6353–01–P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Proposed Information Collection; Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed Senior Corps Foster Grand Parent pilot case study instrument. The study involves interviews and focus groups with FGP grantees, volunteers and stakeholder's to better understand their experiences implementing evidence based education models. The information will allow CNCS Senior Corps administrators to understand these processes as it considers broadening the use of evidence based national education models.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by March 2, 2015.

**ADDRESSES:** You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Senior Corps Program; Attention Anthony Nerino, Research Associate, Office #10913A; 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) Electronically through the Corporation's email system to *anerino@cns.gov.*

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Anthony Nerino, (202–606–3913), or by email at *anerino@cns.gov.*

**SUPPLEMENTARY INFORMATION:**

CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

### Background

CNCS has contracted with ICF international to implement case studies of selected FGP grantees that are implementing two similar national education models in various service sites. The case study instrument will involve interviews and focus groups with current and former FGP project administrators, staff including site supervisors and volunteer coordinators and volunteers at two sites implementing each of two different models—Jumpstart and Reading Partners.

The information is designed to allow CNCS Senior Corps administrators to understand the process and experiences of grantees as they implement national education models including member

and beneficiary recruitment, member training, program structure and processes, program modifications specific to FGP, scope and reach of the various projects, and observed outcomes for members and beneficiaries.

Potential sites for inclusion in the study have been drawn from existing and former grantees implementing two national models, Jumpstart and Reading Partners.

Interview and focus group data will be collected via taped and written responses to telephone conversations.

Data analysis will focus on identifying and understanding factors associated the process (opportunity costs, benefits, obstacles and preparation) related to the decision to use a model approach to tutoring and educational interventions.

Current Action:

CNCS seeks public comment on a new data collection instrument developed for this project. The case study interview and focus group data collection instrument is being designed by the contractor for this project.

*Type of Review:* New.

*Agency:* Corporation for National and Community Service.

*Title:* Foster Grandparent Case Study.

*OMB Number:* None.

*Agency Number:* None.

*Affected Public:* Selected FGP grantees.

*Total Respondents:* Interviews 80—Focus Group Participants 60.

*Frequency:* One time.

*Average Time Per Response:* 60 to 90 minutes.

| Respondent category | Number | Time (minutes) | Total hours |
|---|---|---|---|
| Focus Group Participants | 60 | 90 | 90 |
| Interview Participants | 80 | 60 | 80 |

*Estimated Total Burden Hours:* 170.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 19, 2014.

**Mary Hyde,**

*Office of Research and Evaluation.*

[FR Doc. 2014–30340 Filed 12–29–14; 8:45 am]

**BILLING CODE 6050–28–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2014–HA–0161]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense for Health Affairs, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by March 2, 2015.

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

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

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

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Health Agency (DHA), Communications Division, ATTN: Lennya Bonivento, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101, or call DHA Communications Division, at 703–681–1770.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Assistance Reporting Tool (ART), OMB Control Number 0720–TBD.

*Needs and Uses:* The ART is a secure web-based system that captures feedback on and authorization related to TRICARE benefits. Users are comprised of Military Health System (MHS) customer service personnel, to include Beneficiary Counseling and Assistance Coordinators, Debt Collection Assistance Officers, personnel, family support, recruiting command, case managers, and others who serve in a customer service support role. The ART is also the primary means by which DHA-Great Lakes staff capture medical authorization determinations and claims assistance information for remotely located service members, line of duty care, and for care under the Transitional Care for Service-related Conditions benefit. ART data reflects the customer service mission within the MHS: It helps customer service staff users prioritize and manage their case workload; it allows users to track beneficiary inquiry workload and resolution, of which a major component is educating beneficiaries on their TRICARE benefits. Personal health information (PHI) and personally identifiable information (PII) entered into the system is received from individuals via a verbal or written exchange and is only collected to facilitate beneficiary case resolution. Authorized users may use the PII/PHI to obtain and verify TRICARE eligibility, treatment, payment, and other healthcare operations information for a

specific individual. All data collected is voluntarily given by the individual. At any time during the case resolution process, individuals may object to the collection of PHI and PII via verbal or written notice. Individuals are informed that without PII/PHI the authorized user of the system may not be able to assist in case resolution, and that answers to questions/concerns would be generalities regarding the topic at hand.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 63,500.

*Number of Respondents:* 254,000.

*Responses per Respondent:* 1.

*Annual Responses:* 254,000.

*Average Burden per Response:* 15 minutes.

*Frequency:* On Occasion.

The Defense Health Agency (DHA) Communications Division designed the ART as a secure, (Department of Defense Information Assurance Certification and Accreditation Process-certified with a Privacy Impact Assessment on file with the DHA Privacy and Civil Liberties Office) web-based system to track, refer, reflect, and report workload associated with resolution of beneficiary and/or provider inquiries. The ART is also the primary means by which DHA-Great Lakes staff capture medical authorization determinations and claims assistance information for remotely located service members, line of duty care, and for care under the Transitional Care for Service-related Conditions benefit.

Users are comprised of MHS customer service personnel, to include Beneficiary Counseling and Assistance Coordinators, Debt Collection Assistance Officers, DHA-Great Lakes staff, personnel, family support, recruiting command, case managers, and others who serve in a customer service support role. Only individuals with a valid need-to-know demonstrated by assigned official Government duties are granted access to the ART. These individuals must satisfy all personnel security criteria with special protection measures or restricted distribution as established by the data owner.

ART data reflects the customer service mission within the MHS: It helps customer service staff users prioritize and manage their case workload; it allows users to track beneficiary inquiry workload and resolution, of which a major component is educating beneficiaries on their TRICARE benefits.

PHI and PII entered into the system is received from individuals via a verbal or written exchange and is only collected to facilitate beneficiary case resolution. Authorized users may use the PII/PHI to obtain and verify TRICARE eligibility, treatment, payment, and other healthcare operations information for a specific individual. All data collected is voluntarily given by the individual. At any time during the case resolution process, individuals may object to the collection of PHI and PII via verbal or written notice. Individuals are informed that without PII/PHI the authorized user of the system may not be able to assist in case resolution, and that answers to questions/concerns would be generalities regarding the topic at hand.

Dated: December 22, 2014.

**Aaron Siegel,**

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

[FR Doc. 2014–30418 Filed 12–29–14; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DoD–2013–HA–0107]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by January 29, 2015.

**FOR FURTHER INFORMATION CONTACT:** Fred Licari, 571–372–0493.

**SUPPLEMENTARY INFORMATION:**

*Title, Associated Form and OMB Number:* Patient Centered Medical Home (PCMH) Staff Satisfaction Survey; 0720–TBD.

*Type of Request:* New.

*Number of Respondents:* 3,105.

*Responses per Respondent:* 2.

*Annual Responses:* 6,210.

*Average Burden per Response:* 10 minutes.

*Annual Burden Hours:* 1,035.

*Needs and Uses:* The information collection requirement is necessary to measure satisfaction among staff at direct care military treatment facilities (MTFs) that have been identified as current or potential future PCMHs. The survey will ask staff members what new PCMH processes are or are not working well at the clinic. It will also ask about teamwork among staff at the clinic, the overall clinic environment, and what available resources are assisting them in their provision of quality patient centered care. Eligible staff include: Physicians, nurse practitioners, physician assistants, registered nurses, licensed practical nurses, corpsmen, and administrative staff. Over the next 5–7 years, the DoD will make a significant investment in this primary care transformation. By fielding a survey focused on primary care staff satisfaction, the MHS will be able to monitor our investment in PCMH and study how it affects our people. The goals of this survey effort are to assess staff satisfaction, attitudes and perceptions regarding the implementation of the Patient Centered Medical Home. Respondents will be all military, federal (GS/NSPS) and contracted medical professionals and support staff who work in PCMH clinics. The survey will be administered via a MHS/DoD platform that will capture response data. The survey will be administered via an online tool on a bi-annual basis to medical professionals and support staff. The population sample will receive a pre-notification, and reminder notifications to encourage participation.

*Affected Public:* Individuals and households; MTF contractor providers and support staff.

*Frequency:* Bi-annual.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Mr. Josh Brammer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Josh Brammer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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

*DOD Clearance Officer:* Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, Information Collections Program, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: December 19, 2014.

**Aaron Siegel,**

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

[FR Doc. 2014–30245 Filed 12–29–14; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DoD–2014–OS–0159]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Notice to alter a System of Records.

**SUMMARY:** The Office of the Secretary of Defense proposes to alter a system of records, DPR 40 DoD, entitled ''Wounded Warrior Care and Recovery Transition Coordination Program System Solution'' in its inventory of record systems subject to the Privacy Act of 1974, as amended.

This system is used to improve the timeliness, efficacy, and transparency of the care, management, and transition of recovering Service Members or eligible family members and caregivers receiving support (as defined in DoD Instruction 1300.24). Contact information is used by case managers to facilitate the uniformity and effectiveness of care and/or transition from active duty to temporary or permanent retirement for eligible individuals. These records are also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness and conducting research.

**DATES:** Comments will be accepted on or before January 29, 2015. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

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

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Office Web site at *http://dpcld.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 16, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 22, 2014.

**Aaron Siegel,**

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

### DPR 40 DoD

**SYSTEM NAME:**

Wounded Warrior Care and Recovery Transition Coordination Program System Solution (September 27, 2010, 75 FR 59236).

**CHANGES:**

* * * * *

**SYSTEM NAME:**

Delete entry and replace with ''Recovery Coordination Program Support Solution.''

**SYSTEM LOCATION:**

Delete entry and replace with ''Defense Information Systems Agency (DISA), Defense Enterprise Computing Center (DECC), Mechanicsburg Building 308, Naval Support Activity (NSA), 5450 Carlisle Pike, Mechanicsburg, PA 17050–0975.''

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with ''Recovering Service members (RSMs) who have been wounded, injured or have an illness, and their spouses, dependents, and caregivers. RSMs may be undergoing medical treatment, recuperation or therapy; or may be assigned to a temporary disability retired or permanent disability retired list pending Military Department disability evaluation system proceedings.''

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with ''Name; rank/grade; Social Security Number (SSN) and truncated SSN; Department of Defense identification number (DoD ID); date of birth; current address; home telephone number; Service, component, service separation information including Permanent Duty Retirement List (PDRL), Temporary Duty Retirement List (TDRL), medical separation, limited injury and illness-specific medical information, and other personnel management data specifically awards, Military Occupational Specialty (MOS), time in service, education information, end active obligated service date, demobilization date, separation date, retirement date, temporary disability retirement list date, permanent disability retirement; and spouse, dependents and/or primary caregiver name, address, and telephone number (home, cell and/or work).''

* * * * *

**PURPOSE(S):**

Delete entry and replace with ''To improve the timeliness, efficacy, and transparency of the care, management, and transition of recovering Service Members or eligible family members and caregivers receiving support (as defined in DoD Instruction 1300.24). Contact information is used by case managers to facilitate the uniformity and effectiveness of care and/or transition from active duty to temporary or permanent retirement for eligible individuals. These records are also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness and conducting research.''

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may specifically be disclosed outside the DoD as a routine use

pursuant to 5 U.S.C. 552a(b)(3) as follows:

Service member records are shared with the Department of Veterans Affairs (VA) as a checklist upon completion of the program with the DoD.

**LAW ENFORCEMENT ROUTINE USE:**

If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

**CONGRESSIONAL INQUIRIES DISCLOSURE ROUTINE USE:**

Disclosure from a system of records maintained by a DoD Component may be made 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.

**DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR LITIGATION ROUTINE USE:**

A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

**DISCLOSURE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION ROUTINE USE:**

A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

**DATA BREACH REMEDIATION PURPOSES ROUTINE USE:**

A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component 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 the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.''

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Delete entry and replace with ''Electronic storage media.''

**RETRIEVABILITY:**

Delete entry and replace with ''Last name, SSN, DoD ID number, Service, component.''

**SAFEGUARDS:**

Delete entry and replace with ''The servers are maintained at a military installation with 24-hour guards and maintained in a locked facility. The servers and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. A system administrator grants specific access privileges and users are authenticated. Access requires valid Common Access Card (CAC)-based certificates and PIN. Records are maintained in a secure, password protected electronic system that utilizes security hardware and software that includes multiple firewalls, active intruder detection, encryption at rest and in transit, external certificates, DoD public key infrastructure certificates and role-based access controls.''

**RETENTION AND DISPOSAL:**

Delete entry and replace with ''Disposition pending (until the National Archives and Records Administration approves the retention and disposal schedule, records will be treated as permanent).''

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with ''Principal Deputy for Care Coordination, Office of Warrior Care Policy, Office of the Secretary of Defense, OUSD (P&R) WCP, 200 Stovall Street, Alexandria, VA 22332–0800.''

**NOTIFICATION PROCEDURE:**

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Principal Deputy for Care Coordination, Office of Warrior Care Policy, Office of the Secretary of Defense, OUSD (P&R) WCP, 200 Stovall Street, Alexandria, VA 22332–0800.

Signed, written requests must contain the individual's full name, mailing address and SSN.''

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington DC 20301–1155.

Signed, written requests must include the name and number of this system of record notice, the Service member's full name and SSN.''

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with ''The Office of the Secretary of Defense (OSD) rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81, 32 CFR part 311; or may be obtained from the system manager.''

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with ''Service members, Defense Enrollment Eligibility Reporting System (DEERS), Operational Data Store Enterprise (ODSE) system, Total Force Data Warehouse, and Defense Casualty Information Processing System (DCIPS).''

* * * * *

[FR Doc. 2014–30364 Filed 12–29–14; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DoD–2014–OS–0160]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Notice to add a new System of Records.

**SUMMARY:** The Office of the Secretary of Defense proposes to add a new system

of records, DAU 08, entitled ''Defense Acquisition University Student Information System (SIS)'' to manage administrative and academic functions related to student registration, and courses attempted and completed. Records are used to verify attendance and grades, and are also used as a management tool for statistical analysis, tracking, and reporting.

**DATES:** Comments will be accepted on or before January 29, 2015. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

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

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

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpcld.defense.gov/.* The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 16, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 19, 2014.

**Aaron Siegel,**

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

## DAU 08

### SYSTEM NAME

Defense Acquisition University Student Information System (SIS).

### SYSTEM LOCATION

Defense Acquisition University (DAU), 9820 Belvoir Road, Fort Belvoir, VA 22060–5565.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

All current and former students of the DAU including contractors and foreign nationals.

### CATEGORIES OF RECORDS IN THE SYSTEM

Name; DAU ID Number; date of birth; citizenship; home address; personal home telephone number, personal cell telephone number; personal email address; education information (college transcripts); employment information (job series; rank; pay grade; service; user type (*i.e.,* DoD, military, civilian), business address, business telephone number, business email address, supervisor's name; supervisor's telephone number; supervisor's email address); emergency contact; Temporary Duty (TDY) address; TDY telephone number; registration information (*i.e.,* registered, waitlisted, graduated); course information (*i.e.,* course name, class or section number, dates); instructor information; DAU grades; and special accommodation (yes/no only).

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM

10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; and DoD Directive 5000.57, Defense Acquisition University.

### PURPOSE(S)

To manage administrative and academic functions related to student registration, and courses attempted and completed. Records are used to verify attendance and grades, and are also used as a management tool for statistical analysis, tracking, and reporting.

### 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 of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

2. Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made 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.

3. Disclosures Required by International Agreements Routine Use: A record from a system of records maintained by a DoD Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

4. Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

5. Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

6. Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component 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 the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

#### STORAGE

Electronic storage media.

#### RETRIEVABILITY

Individual's name, DAU ID number, date of birth, course name, and class or section number.

#### SAFEGUARDS

Physical controls include: Security guards, identification badges, and key cards. Building is located on a federal installation with around-the-clock gate guards and is locked during non-business hours. Only individuals with the need to know and role-based access are authorized access to records. Personally Identifiable Information (PII) fields are not exposed to users who have not been properly cleared and trained. Reports containing PII may only be created by those authorized. Any reports generated with PII are appropriately marked per regulations. System is contained in a DAU enclave with boundary defense mechanisms in place.

Technical controls include: User identification, passwords, intrusion detection system (IDS), data is encrypted at rest and in transit, firewalls, virtual private network (VPN), access to records requires the use of DoD Public Key Infrastructure Certificates or Common Access Card (CAC) and Personnel Identification Number (PIN).

Administrative controls include: Periodic security audits, regular monitoring of users' security practices, methods to ensure only authorized personnel access to PII, encryption of backups containing sensitive data.

#### RETENTION AND DISPOSAL

Records are destroyed when 50 years old.

#### SYSTEM MANAGERS AND ADDRESS

Center Director, Defense Acquisition University, Scheduling and Student Support, Performance and Resource Management, 9820 Belvoir Road, Fort Belvoir, VA 22060–5565.

#### NOTIFICATION PROCEDURE

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Center Director, Defense Acquisition University, Performance and Resource Management, 9820 Belvoir Road, Fort Belvoir, VA 22060–5565.

Signed, written requests should contain full name, DAU ID number, date of birth, current address, and telephone number.

#### RECORD ACCESS PROCEDURES

Individuals seeking access to information about themselves contained in this system, should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests must contain full name, DAU ID number, date of birth, current address, telephone number, and the name and number of this system of records notice.

#### CONTESTING RECORD PROCEDURES

The OSD rules for accessing records, for contesting contents, and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

#### RECORD SOURCE CATEGORIES

The individual, the DAU Data Center, Career Acquisition Personnel & Position Management Information System (CAPPMIS) (Army system), Defense Civilian Personnel Data System (DCPDS), Acquisition Career Management System (ACMS) (Air Force system), Management Information System (MIS II) (Navy acquisition career management system), and Defense Manpower Data Center (DMDC).

#### EXEMPTIONS CLAIMED FOR THE SYSTEM

None.

[FR Doc. 2014–30223 Filed 12–29–14; 8:45 am]

BILLING CODE 5001–06–P

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## DEPARTMENT OF DEFENSE

### Department of the Army

**[Docket ID USA–2014–0040]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by January 29, 2015.

**FOR FURTHER INFORMATION CONTACT:** Fred Licari, 571–372–0493.

**SUPPLEMENTARY INFORMATION:**

*Title, Associated Form and OMB Number:* The Contractor Manpower Reporting System; OMB Control Number 0702–0120.

*Type of Request:* Extension.

*Number of Respondents:* 12,215.

*Responses per Respondent:* 1.

*Annual Responses:* 12,215.

*Average Burden per Response:* 5 minutes.

*Annual Burden Hours:* 1018.

*Needs and Uses:* This program greatly enhances the ability of the Army to identify and track its contractor workforce. Current systems do not have contractor manpower data that is collected by the contractor Manpower Reporting System—*i.e.*, Direct Labor Hours, Direct Labor Dollars, and Organization supported. Existing financial and procurement systems have obligation amounts of an unknown mix of services and supplies, and the Department of the Army is not able to trace the funding to the organization supported. Like all other Federal Government agencies, the Army's reliance on service contractor employees has increased significantly over the past few years.

*Affected Public:* Business or other for-profit.

*Frequency:* Annually.

*Respondent's Obligation:* Required to Obtain or Maintain Benefits.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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

*www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: December 22, 2014.

**Aaron Siegel,**

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

[FR Doc. 2014–30356 Filed 12–29–14; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Department of the Army

### Intent To Grant an Exclusive License of U.S. Government-Owned Patent

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. Patents 7,899,687; 8,510,129; and 8,682,692; issued respectively on March 1, 2011, August 13, 2013 and March 25, 2014, entitled respectively ''System and method for handling medical information,'' ''Medical information handling system and method,'' and ''Medical information handling method, and foreign patents derived from PCT Application PCT/US03/15071 filed on May 15, 2003, entitled ''System and method for handling medical information'' to Vista Partners, LLC, with its principal place of business at Hanger 9B2, 7375 South Peoria, Englewood, CO 80112–4157.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, MD 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For licensing issues, Mr. Barry Datlof, Office of Research & Technology Assessment, (301) 619–0033. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** Anyone wishing to object to grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2014–30457 Filed 12–29–14; 8:45 am]

BILLING CODE 3710–08–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

**[Docket Number DARS–2014–0052]**

### Submission for OMB Review; Comment Request

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Notice.

**SUMMARY:** The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 35).

**DATES:** Consideration will be given to all comments received by January 29, 2015.

**SUPPLEMENTARY INFORMATION:**

*Title, Associated Form, and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS), Independent Research and Development Technical Descriptions; OMB Control Number 0704–0483.

*Type of Request:* Extension.

*Number of Respondents:* 700.

*Responses per Respondent:* Approximately 38.5.

*Annual Responses:* 26,950.

*Average Burden per Response:* Approximately .5 hours.

*Annual Response Burden Hours:* 13,475.

*Needs and Uses:* DFARS 231.205–18 requires contractors to report independent research and development (IR&D) projects to the Defense Technical Information Center (DTIC) using the DTIC's online IR&D database. The data provides in-process information on IR&D projects for which DoD reimburses the contractor as an allowable indirect expense. In addition to improving the Department's ability to determine whether contractor IR&D costs are allowable, the data provides visibility into the technical content of industry IR&D activities to meet DoD needs.

*Affected Public:* Businesses and other for-profit entities.

*Reporting Frequency:* At least annually and when the project is completed.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

*DoD Public Collections Clearance Officer:* Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: Publication Collections Program, WHS/ESD Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2014–30463 Filed 12–29–14; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2014–ICCD–0139]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluation of Preschool Special Education Practices Phase I

**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 a new information collection.

**DATES:** Interested persons are invited to submit comments on or before January 29, 2015.

**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–0139 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov*. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will only accept comments during the comment period in this mailbox when the regulations.gov site is not available. 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 specific questions related to collection activities, please contact Yumiko Sekino, 202–219–2046.

**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:* Evaluation of Preschool Special Education Practices Phase I.

*OMB Control Number:* 1850–NEW.

*Type of Review:* A new information collection.

*Respondents/Affected Public:* State, Local and Tribal Governments.

*Total Estimated Number of Annual Responses:* 1,251.

*Total Estimated Number of Annual Burden Hours:* 1,226.

*Abstract:* The main objective of the Evaluation of Preschool Special Education Practices, Phase I study is to assess the feasibility of conducting a large-scale randomized controlled trial (RCT) evaluation of one or more curricula or interventions that are used with preschool children with disabilities to promote their learning of language, literacy, social-emotional skills, and/or appropriate behavioral skills for school. The feasibility assessment will consider the core features of an evaluation design, including the following: (1) Curricula and/or interventions to be evaluated; (2) Study context and participants; and (3) Key design elements, such as the counterfactual condition, unit of assignment, target minimum detectable effects (MDEs), sample size, and data collection plans.

Dated: December 23, 2014.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2014–30523 Filed 12–29–14; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Nevada

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, January 21, 2015, 5:00 p.m.

**ADDRESSES:** National Atomic Testing Museum, 755 East Flamingo Road, Las Vegas, Nevada 89119.

**FOR FURTHER INFORMATION CONTACT:** Barbara Ulmer, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 630–0522; Fax (702) 295–5300 or Email: *NSSAB@nnsa.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:*

1. Recommendation Development for Annual Nevada National Security Site Environmental Report—Work Plan Item #5
2. Updates and Recommendation Development for Assessment of the Underground Test Area Quality Assurance Plan Implementation—Work Plan Item #8
3. Recommendation Development for Potential New Resource Conservation and Recovery Act (RCRA) Part B Permitted Mixed Waste Disposal Unit—Work Plan Item #9
4. Recommendation Development for Waste Management Symposia Briefings—Work Plan Item #1

*Public Participation:* The EM SSAB, Nevada, 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 Barbara Ulmer at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Barbara Ulmer at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments can do so during the 15 minutes allotted for public comments.

*Minutes:* Minutes will be available by writing to Barbara Ulmer at the address listed above or at the following Web site: *http://nv.energy.gov/nssab/MeetingMinutes.aspx*

Issued at Washington, DC, on December 22, 2014.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2014–30319 Filed 12–29–14; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Savannah River Site

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:**

Monday, January 26, 2015, 1:00 p.m.–5:00 p.m.

Tuesday, January 27, 2015, 8:30 a.m.–4:40 p.m.

**ADDRESSES:** New Ellenton Community Center, 212 Pine Hill Avenue, New Ellenton, SC 29809.

**FOR FURTHER INFORMATION CONTACT:** de'Lisa Carrico, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–8607.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:*

**Monday, January 26, 2015**

1:00 p.m. Welcome & Agenda Review
1:10 p.m. Recommendation & Work Plan Update
1:10 p.m. Combined Committees Session

*Order of committees:*

- Waste Management
- Administrative & Outreach
- Facilities Disposition & Site Remediation
- Nuclear Materials
- Strategic & Legacy Management

4:45 p.m. Public Comments Session
5:00 p.m. Adjourn

**Tuesday, January 27, 2015**

8:30 a.m. Opening, Pledge, Approval of Minutes, and Chair Update
9:00 a.m. Greeting by President & CEO of Savannah River Nuclear Solutions
9:10 a.m. Agency Updates
10:00 a.m. Public Comments Session
10:15 a.m. Discussion of the Waste Isolation Pilot Plant
11:00 a.m. Nuclear Materials Committee Report
11:40 a.m. Waste Management Committee Report
12:00 p.m. Public Comments Session
12:10 p.m. Lunch Break
1:30 p.m. Facilities Disposition & Site Remediation Committee Report
2:30 p.m. Strategic & Legacy Management Committee Report
3:15 p.m. Defense Nuclear Facilities Safety Board Presentation
4:00 p.m. Administrative & Outreach Committee Report
4:30 p.m. Public Comments Session
4:40 p.m. Adjourn

*Public Participation:* The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact de'Lisa Carrico at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact de'Lisa Carrico's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://cab.srs.gov/srs-cab.html.*

Issued at Washington, DC, on December 22, 2014.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2014–30321 Filed 12–29–14; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, January 14, 2015, 8:00 a.m.–4:00 p.m. The opportunity for public comment is at 2:15 p.m. This time is subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

**ADDRESSES:** Hampton Inn, 2500 Channing Way, Idaho Falls, ID 83402.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, Idaho 83415. Phone (208) 526–6518; Fax (208) 526–8789 or email: *pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://inlcab.energy.gov/.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

*Tentative Topics (agenda topics may change up to the day of the meeting; please contact Robert L. Pence for the most current agenda):*

- Recent Public Involvement
- Idaho Cleanup Project Progress to Date
- Update on Integrated Waste Treatment Unit (IWTU)
- Accelerated Retrieval Project Oversight
- Land Use Recommendation Discussion and Deliberation
- Five Year EM Review
- Budget Overview
- Historic Overview of EM Program at Idaho National Laboratory (INL)
- Student Participation in the INL Site EM Citizens Advisory Board

*Public Participation:* The EM SSAB, Idaho National Laboratory, 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 Robert L. Pence at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Robert L. Pence at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the

presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Robert L. Pence, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site: *http://inlcab.energy.gov/pages/meetings.php.*

Issued at Washington, DC, on December 22, 2014.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2014–30320 Filed 12–29–14; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Energy Efficiency and Renewable Energy

### State Energy Advisory Board (STEAB)

**AGENCY:** Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of open live board meeting.

**SUMMARY:** This notice announces a Board meeting of the State Energy Advisory Board (STEAB). 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:** January 13th, 2015, 9:00 a.m. to 5:30 p.m.; January 14th, 2015, 9:00 a.m. to 2:30 p.m.

**ADDRESSES:** Renaissance Washington, DC Dupont Circle, 1143 New Hampshire Ave. NW., Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** Monica Neukomm, Policy Advisor, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. Phone number 202–287–5189, and email *monica.neukimm@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

*Tentative Agenda:* Review deliverables and accomplishments from the STEAB Engagement Plan for FY 2014 and look forward to a revised FY 2015 plan, meet with senior staff of EERE to discuss the status of the Small Business Voucher Pilot Program, CEMI and other EERE initiatives, explore opportunities to continue assisting with the QER year 2 process, discuss updates and provide recommendations on the Weatherization Assistance Program, receive updates from key members of EERE, and update members of the Board on routine business matters.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Monica Neukomm at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Minutes:* The minutes of the meeting will be available for public review and copying within 90 days on the STEAB Web site, *www.steab.org.*

Issued at Washington, DC, on December 19, 2014.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2014–30318 Filed 12–29–14; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP15–30–000]**

### Southern Natural Gas Company, L.L.C.; Notice of Application

Take notice that on December 15, 2014, Southern Natural Gas Company, L.L.C. (Southern), 569 Brookwood Village, Suite 749, Birmingham, Alabama 35209, filed in Docket No. CP15–30–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) requesting authorization to abandon by sale to AMP Gathering I, LP (Align Midstream), approximately 33.565 miles of its 33.6 mile 10-inch Carthage Lateral Pipeline, as well as three associated receiving stations and other appurtenant facilities located in Panola and Shelby Counties, Texas, and to abandon by retirement the remaining 300 feet of its Carthage Lateral Pipeline located in DeSoto Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Align Midstream filed a petition for a declaratory order, in Docket No. CP15–34–000, finding that the Carthage Facilities to be acquired by Southern will perform a gathering function, and therefore will be exempt from the Commission's jurisdiction. The notice for CP15–34–000 will be issued simultaneously with this one.

The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Pam Donaldson, Regulatory Affairs, Southern Natural Gas Company, L.L.C., 569 Brookwood Village, Suite 749, Birmingham, Alabama 35209, at (205) 325–3739.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal.

The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on January 8, 2015.

Dated: December 18, 2014.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2014–30421 Filed 12–29–14; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP15–34–000]**

### AMP Gathering I, LP; Notice of Petition for Declaratory Order

Take notice that on December 15, 2014, pursuant to section 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2014), AMP Gathering I, LP (Align Midstream) submitted a petition for declaratory order seeking a ruling that certain natural gas pipeline and appurtenant facilities (Carthage Gathering Facilities) to be acquired by Align Midstream from Southern Natural Gas Company, L.L.C. (Southern) will perform a gathering function upon their abandonment and sale, and therefore will be exempt from the Commission's jurisdiction pursuant to section l(b) of the Natural Gas Act, 15 U.S.C. 717, *et seq.*[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on January 14, 2015

Dated: December 18, 2014.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2014–30422 Filed 12–29–14; 8:45 am]

**BILLING CODE 6717–01–P**

[1] Moreover, in Docket No. CP15–30–000, Southern filed a request for authorization to abandon, by sale to Align Midstream, certain facilities. *Notice of Application,* issued December 18, 2014.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2310–193—California; Project No. 14531–000—California; Project No. 14530–000—California; Project No. 2266–102—California]**

### Pacific Gas and Electric Company Nevada Irrigation District; Notice of Availability of the Final Environmental Impact Statement for the Upper Drum-Spaulding, Lower Drum, Deer Creek, and Yuba-Bear Hydroelectric Projects

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR)(18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects has reviewed the applications for license for Pacific Gas and Electric Company's Upper Drum-Spaulding (FERC No. 2310), Lower Drum (FERC No. 14531), and Deer Creek (FERC No. 14530) Projects and Nevada Irrigation District's Yuba-Bear Project (FERC No. 2266) and has prepared a final environmental impact statement (EIS) for the projects.

The Upper Drum-Spaulding, Lower Drum, and Deer Creek Projects are located within three primary river basins, the South Yuba River, Bear River, and North Fork of the North Fork American River, in Nevada and Placer Counties, California, and occupy 994 acres of federal lands administered by the Forest Service, Bureau of Land Management (BLM), and Bureau of Reclamation. The Yuba-Bear Project is located within three major river basins, the Middle Yuba River, South Yuba River, and Bear River, in Sierra, Nevada, and Placer Counties, California, and occupies 1,748 acres of federal lands administered by the Forest Service and BLM.

The final EIS contains staff's analysis of the applicants' proposals and the alternatives for relicensing the four projects. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicants, and Commission staff.

A copy of the final EIS is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''e-Library'' link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All comments must be filed by Monday, February 9, 2015, and should reference Project Nos. 2310–193, 14531–000, 14530–000, and/or 2266–102. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

For further information, please contact Alan Mitchnick at (202) 502–6074 or at *alan.mitchnick@ferc.gov.*

Dated: December 19, 2014.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2014–30423 Filed 12–29–14; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No.**

### Gordon Fulton; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions to Intervene

On December 12, 2014, Gordon Fulton filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Fulton Hydropower Project would have an installed capacity of 406 kilowatts (kW), and would be located at the end of an existing 20-inch-diameter pipeline used for the purposes of irrigation and stockwater. The project would be located near the city of Mackay in Custer County, Idaho.

*Applicant Contact:* John Crockett, 3296 Snowflake Way, Boise, ID 83706, Phone No. (208) 344–5319.

*FERC Contact:* Christopher Chaney, Phone No. (202) 502–6778, email: *christopher.chaney@ferc.gov.*

*Qualifying Conduit Hydropower Facility Description:* The proposed project would consist of: (1) A proposed 850-square-foot powerhouse; (2) one twin jet Pelton turbine connected to an induction generator with an installed capacity of 406 kW; and (3) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 1,330 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

| *Statutory provision* | *Description* | *Satisfies (Y/N)* |
|---|---|---|
| FPA 30(a)(3)(A), as amended by HREA .. | The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. | Y |
| FPA 30(a)(3)(C)(i), as amended by HREA | The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit. | Y |
| FPA 30(a)(3)(C)(ii), as amended by HREA. | The facility has an installed capacity that does not exceed 5 megawatts ..... | Y |
| FPA 30(a)(3)(C)(iii), as amended by HREA. | On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA. | Y |

*Preliminary Determination:* Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

*Comments and Motions to Intervene:* Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and

385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

*Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

*Locations of Notice of Intent:* Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*e.g.,* CD15–17) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659.

[1] 18 CFR 385.2001–2005 (2014).

Dated: December 18, 2014.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2014–30424 Filed 12–29–14; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### National Nuclear Security Administration

### Record of Decision for the Continued Operation of the Department of Energy/National Nuclear Security Administration Nevada National Security Site and Off-Site Locations in the State of Nevada

**AGENCY:** National Nuclear Security Administration, U.S. Department of Energy.

**ACTION:** Record of Decision.

**SUMMARY:** The U.S. Department of Energy/National Nuclear Security Administration (DOE/NNSA) is issuing this Record of Decision (ROD) for the continued management, operation, and activities of the Nevada National Security Site (NNSS) and Off-Site Locations in the State of Nevada pursuant to the *Final Site-Wide Environmental Impact Statement for the Continued Operation of the Department of Energy/National Nuclear Security Administration Nevada National Security Site and Off-Site Locations in the State of Nevada,* DOE/EIS–0426 (Final NNSS SWEIS) issued on February 22, 2013. In making its decision, DOE/NNSA considered potential environmental impacts of operations and activities, current and future mission needs, technical and security considerations, availability of resources, and public comments on the Draft and Final NNSS SWEIS. The Final NNSS SWEIS analyzes ongoing and reasonably foreseeable future operations and activities at the NNSS and other DOE/NNSA facilities in Nevada, including the Remote Sensing Laboratory (RSL) at Nellis Air Force Base (NAFB), the North Las Vegas Facility (NLVF), the Tonopah Test Range (TTR), and environmental restoration sites located on the Nevada Test and Training Range (NTTR) (formerly the Nellis Air Force Range).

DOE/NNSA has decided to implement the Preferred Alternative, which is identified in the Summary, Table S–1, and Chapter 3, Section 3.4, of the Final NNSS SWEIS. The capabilities, projects, and activities that comprise the elements of DOE/NNSA's decision, and the original alternative from which each is derived, are described in the ''Decision'' section below.

**FOR FURTHER INFORMATION CONTACT:** For further information on this ROD, or other NNSS National Environmental Policy Act (NEPA) documents, contact Ms. Linda M. Cohn, SWEIS Document Manager, NNSA Nevada Field Office, U.S. Department of Energy, P.O. Box 98518, Las Vegas, Nevada 89193–8518, (702) 295–0077. For information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756. Additional information regarding DOE NEPA activities and access to many DOE NEPA documents, including the Final NNSS SWEIS, are available on the Internet through the DOE NEPA Web site at *http://energy.gov/nepa.*

**SUPPLEMENTARY INFORMATION:**

### Background

DOE/NNSA prepared the Draft and Final NNSS SWEIS and this ROD pursuant to the regulations of the Council on Environmental Quality (CEQ) for implementing NEPA (40 CFR parts 1500–1508) and DOE's NEPA Implementing Procedures (10 CFR part 1021).

The DOE/NNSA missions and associated programs in Nevada are (1) the National Security/Defense Mission, which includes the Stockpile Stewardship and Management Program; Nuclear Emergency Response, Nonproliferation, and Counterterrorism Program; and Strategic Partnership Program (previously Work for Others); (2) the Environmental Management Mission, which includes the Waste Management and Environmental Restoration Programs; and (3) the Nondefense Mission, which includes the General Site Support and Infrastructure, Conservation and Renewable Energy, and Other Research and Development Programs. These missions and programs are carried out at the NNSS, RSL, NLVF, and NTTR/TTR. The U.S. Air Force, U.S. Bureau of Land Management, and Nye County, Nevada, were cooperating agencies in the preparation of the NNSS SWEIS. In addition, the Consolidated Group of Tribes and Organizations, which includes representatives from 16 culturally affiliated American Indian Tribes, participated in the preparation of this SWEIS by providing text in the document that gave their perspectives of the land and activities conducted and proposed by the Federal government.

The NNSS occupies approximately 1,360 square miles of desert and mountain terrain in southern Nevada. It

is a multi-disciplinary, multi-purpose facility primarily engaged in work that supports national security, homeland security initiatives, waste management, environmental restoration, and defense and nondefense research and development programs for DOE/NNSA and other government entities.

RSL is located on 35 acres at NAFB in North Las Vegas, Nevada. Radiological emergency response, the Aerial Measuring System, radiological sensor development and testing, Secure Systems Technologies, nuclear nonproliferation capabilities, and information and communication technologies are supported at RSL.

NLVF, located on approximately 78 acres, comprises 29 buildings that include office buildings, a high bay, machine shop, laboratories, experimental facilities, and various other mission-support facilities.

The TTR consists of a 280-square-mile area north of the NNSS on the U.S. Air Force NTTR. Activities conducted at TTR include flight-testing of gravity weapons (bombs); research, development, and evaluation of nuclear weapons components and delivery systems; and national security-related work for other agencies and organizations. Environmental restoration activities are also conducted on the NTTR.

DOE/NNSA analyzed various radioactive waste shipping routes through and around metropolitan Las Vegas, Nevada, in the Draft and Final NNSS SWEIS. DOE/NNSA has taken into consideration the comments and concerns expressed by state, county, and local government officials and the public during the review and comment period for the Draft and in preparation of the Final NNSS SWEIS. Shipments of low-level radioactive waste (LLW) and mixed low-level radioactive waste (MLLW) to the NNSS for disposal will continue to be done in accordance with commitments made to the State of Nevada and provisions of the NNSS waste acceptance criteria regarding routing and related matters associated with such shipments.

**Alternatives Considered**

In the Draft and Final NNSS SWEIS, DOE/NNSA analyzed the potential environmental impacts of three alternatives: (1) No Action, (2) Expanded Operations, and (3) Reduced Operations. These alternatives considered current and reasonably foreseeable missions, programs, capabilities, and projects at the NNSS and the three offsite locations. Alternative descriptions are organized under three missions, each with two or more associated programs. Mission-related capabilities, projects, and activities are identified by program area for each of the alternatives. The three alternatives include similar types of programs, capabilities, projects, and activities, but differ primarily in their levels of operations and facilities requirements. The Final NNSS SWEIS identified a Preferred Alternative, which incorporates elements from the analyzed alternatives.

The No Action Alternative reflects the use of existing capabilities to maintain operations at levels consistent with those experienced since 1996. The Expanded Operations Alternative differs from the No Action Alternative in that the levels of operations would be enhanced or accelerated; some new activities would be implemented; and new facilities would be constructed to support increased levels of operations and activities. In addition, under the Expanded Operations Alternative, DOE/NNSA would modify land use zones at the NNSS to better reflect the kinds of activities that would be undertaken in those zones. Under the Reduced Operations Alternative, DOE/NNSA would conduct some activities at a level similar to that of the No Action Alternative, but for other activities, the levels of operations would be reduced or would cease altogether.

All three alternatives include consideration of potential commercial solar power generation at the NNSS at varying levels of generating capacity (*i.e.,* 240 megawatt [MW]-No Action, 1,000 MW-Expanded Operations, and 100 MW-Reduced Operations). The Final NNSS SWEIS also indicated, and the Preferred Alternative incorporates, a number of conceptual or potential activities for which there is insufficient information available to conduct a project-specific NEPA review (marked with footnote ''a'' in Tables S–1 and 3–3 of the Final NNSS SWEIS). Because the solar power generation scenarios and other identified conceptual or potential activities have not yet been adequately addressed for purposes of NEPA, DOE/NNSA is not making any decision regarding them. When sufficient information becomes available regarding any one or more of these conceptual or potential activities, DOE/NNSA will conduct an appropriate NEPA review before making any decision(s).

**Preferred Alternative**

At the time the Draft NNSS SWEIS was published, DOE/NNSA had not selected a Preferred Alternative. The Final NNSS SWEIS identified DOE/NNSA's Preferred Alternative (described in the Summary, Table S–1 and Chapter 3, Section 3.4) as a hybrid alternative comprising mission-supporting programs, capabilities, projects, and activities selected from among the three alternatives, based upon current and projected mission needs. In some cases, DOE/NNSA identified preferences from each of the three original alternatives within a single program area.

**Environmentally Preferable Alternative**

After considering the potential impacts to each resource area by alternative, DOE/NNSA identified the Reduced Operations Alternative as the environmentally preferable alternative. The operational level of this alternative would be reduced for most programs, and most activities would cease in the northwestern portion of the NNSS (Areas 18, 19, 20, 29, and 30), with the exception of environmental restoration and monitoring, site security operations, military training and exercises, and maintenance of certain critical infrastructure systems. This reduced level of activities, as well as closure of some older and less efficient facilities, would result in lower levels of water, fuel, and electricity use; less physical disturbance of land; and reduced onsite generation of some types of wastes. The pace of environmental restoration activities, as well as other requirements for environmental monitoring and protection, would generally remain unchanged from current levels.

**Environmental Impacts of Alternatives**

The NNSS SWEIS analyzed the potential impacts of each alternative on Land Use, Infrastructure and Energy, Transportation and Traffic, Socioeconomics, Geology and Soils, Hydrology (Groundwater and Surface Water), Biological Resources, Air Quality and Climate, Visual Resources, Cultural Resources, Waste Management, Human Health, and Environmental Justice. Under each alternative, the potential impacts are described in relation to the three major missions (National Security/Defense, Environmental Management, and Nondefense) and the DOE/NNSA facility with which they are associated (NNSS, RSL, NLVF, and TTR). DOE/NNSA also evaluated the potential impacts of each alternative as to irreversible and irretrievable commitments of resources, and the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity. In addition, DOE/NNSA evaluated the impact of potential accidents during transportation of LLW on workers and surrounding

populations. These analyses and results are described in the Summary and Chapter 5 of the Final NNSS SWEIS. Table 3–4 of the Final NNSS SWEIS provides a summary of potential environmental impacts associated with the Preferred Alternative, as well as a means for comparing the potential impacts of the Preferred Alternative with each of the analyzed alternatives.

**Comments on the Final Site-Wide Environmental Impact Statement**

DOE/NNSA distributed the Final NNSS SWEIS to Congressional members and committees; State and local governments; other Federal agencies; culturally affiliated American Indian Tribes; non-governmental organizations; and other stakeholders, including members of the public who requested direct distribution of the document. The Final NNSS SWEIS also was made available to the public via the Internet. Within 30 days following publication of the Final NNSS SWEIS in February 2013, DOE/NNSA received comment letters from the Nuclear Project Office of the State of Nevada, Clark and Nye Counties, and the City of Las Vegas. Also within 30 days following the publication of the Final NNSS SWEIS, a fifth letter was received from the U.S. Environmental Protection Agency (EPA). DOE/NNSA has concluded that these letters do not identify a need for further NEPA analysis. The Appendix to this ROD summarizes DOE/NNSA's consideration of these letters.

**Decision**

DOE/NNSA has decided to implement the Preferred Alternative, which is identified in the Summary, Table S–1, and Chapter 3, Section 3.4 of the Final NNSS SWEIS. The capabilities, projects, and activities that comprise the elements of DOE/NNSA's decision, and the original alternative from which each is derived, are described below.

**National Security/Defense Mission Decisions**

*Stockpile Stewardship and Management Program*

From the No Action Alternative, DOE/NNSA will continue to maintain readiness to conduct underground nuclear tests but will not conduct such a test unless directed by the President in the interest of national security. DOE/NNSA will conduct up to 10 dynamic experiments (including sub-critical experiments at U1a) per year within any one or more of the following NNSS Areas 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, and 16; conduct up to 500 criticality operations (training and other activities) per year at the National Criticality Experiments Research Center at the Device Assembly Facility in Area 6 of the NNSS; conduct up to 600 plasma physics and fusion experiments each year at NLVF and up to 50 each year in Area 11 of the NNSS; conduct up to five post-shot drill-back operations at the NNSS; and disposition damaged U.S. nuclear weapons on an as-needed basis. (Appendix A, A.1.1.1)

From the Expanded Operations Alternative, DOE/NNSA will conduct up to 100 conventional explosives experiments per year within any one or more of the following NNSS Areas 1, 2, 3, 4, 12, and 16, using up to 120,000 pounds TNT-equivalent per experiment of explosive charges in support of both the Stockpile Stewardship and Work for Others Programs (up to 50 of these 100 experiments will be conducted at the Big Explosives Experimental Facility [BEEF] with a TNT-equivalent limitation of 70,000 pounds per experiment); establish a second firing table and high-energy x-ray capability at BEEF to support conventional explosives experiments; establish up to three areas at the NNSS for conducting explosive experiments with depleted uranium, and conduct up to 20 of these experiments per year; conduct up to 36 shock physics experiments per year at the NNSS using actinide targets at the Joint Actinide Shock Physics Experimental Research facility in Area 27 of the NNSS and up to 24 such experiments per year using the Large-Bore Powder Gun at the U1a facility in Area 1 of the NNSS; test weapons components for quality assurance under the Limited Life Component Exchange Program; transfer special nuclear material, including nuclear weapon pits, to and from other locations in the DOE/NNSA complex for staging and use in experiments at the NNSS; and continue to conduct Stockpile Stewardship operations at the TTR (*e.g.,* tests and experiments, including flight test operations for gravity weapons; ground/air-launched rocket and missile operations; impact testing; passive testing of joint test assemblies and conventional weapons; and fuel-air explosives testing). Certain safeguards, security, and other administrative functions at the TTR may be turned over to the U.S. Air Force. (Appendix A, A.2.1.1)

From the Reduced Operations Alternative, DOE/NNSA will decommission and disposition the Atlas Facility (a facility designed to support pulsed power experiments); conduct training for the Office of Secure Transportation up to four times per year at various locations on NNSS roads; and conduct Stockpile Stewardship and Management Program activities, including dynamic experiments, which will continue in any one or more of the following NNSS Areas 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, and 16, but will no longer be conducted in Areas 19 and 20. (Appendix A, A.3.1.1)

*Nuclear Emergency Response, Nonproliferation, and Counterterrorism Programs*

From the No Action Alternative, DOE/NNSA will continue to provide support for the Nuclear Emergency Support Team, the Federal Radiological Monitoring and Assessment Center, the Accident Response Group, and the Radiological Assistance Program; conduct Aerial Measuring System activities from RSL at NAFB; conduct weapons of mass destruction (WMD) emergency responder training at various Nevada Field Office venues, as well as support the DOE Emergency Communications Network. (Appendix A, A.1.1.2)

From the Expanded Operations Alternative, DOE/NNSA will continue to be prepared to disposition improvised nuclear devices and deploy the DOE/NNSA Disposition Forensic Program to the NNSS for training and exercises or for an actual event, as needed, and will additionally disposition radiological dispersion devices as needed. DOE/NNSA will continue to integrate existing activities and experimental facilities (primarily at NNSS) to support U.S. efforts to control the spread of WMDs, particularly nuclear WMDs, including arms control, nonproliferation activities, nuclear forensics, and counterterrorism capabilities. (Appendix A, A.2.1.2)

*Strategic Partnership Program (Work for Others)*

From the No Action Alternative, DOE/NNSA will, on behalf of other agencies and organizations, continue to host treaty verification activities; conduct nonproliferation projects and research and development at the NNSS, including conventional weapons effects and other explosives experiments; support development of capabilities to detect and defeat military assets in deeply buried hardened targets; conduct up to 20 controlled chemical and biological simulant release experiments per year (each experiment will include multiple releases by a variety of means, including explosives); and continue to support training, research, and development of equipment, specialized munitions, and tactics related to counterterrorism. (Appendix A, A.1.1.3)

From the Expanded Operations Alternative, DOE/NNSA will continue to conduct Work for Others Program activities in all approved zones on the NNSS, RSL, and NLVF, and redesignate land use at Area 15 of the NNSS from ''Reserved Zone'' to ''Research, Test, and Experiment Zone''; develop and construct new facilities to support counterterrorism training and research and development activities; continue to support the National Aeronautics and Space Administration's deep space power source development by conducting criticality experiments and emission sequestration experiments using surrogates for rocket motors; increase use of various aerial platforms (such as airplanes, unmanned aerial systems, and helicopters) for research and development, training, and exercises, including constructing additional hangars, shops, and buildings at existing airports at the NNSS; conduct up to 3 underground and 12 open-air radioactive tracer experiments per year; support increased research and development of active interrogation equipment, methods, and training; and conduct Work for Others Program activities at the TTR, including robotics testing, smart transportation-related testing, smoke obscuration operations, infrared tests, and rocket development. (Appendix A, A.2.1.3)

**Environmental Management Mission Decisions**

*Waste Management Program*

From the No Action Alternative, DOE/NNSA will continue to operate the Area 5 Hazardous Waste Storage Unit and store up to 170,000 cubic feet of onsite-generated hazardous waste as needed, pending offsite treatment or disposal; continue to operate the Area 11 Explosives Ordnance Disposal Unit (treating up to 41,000 pounds of explosives over the next 10 years); and continue to operate the Area 6 Hydrocarbon Landfill within permitted conditions. (Appendix A, A.1.2.1)

From the Expanded Operations Alternative, DOE/NNSA will dispose of up to 48,000,000 cubic feet of LLW and up to 4,000,000 cubic feet of MLLW at the Area 5 Radioactive Waste Management Complex (RWMC); store MLLW (received from both on- and off-site generators) at the Area 5 RWMC pending treatment by macroencapsulation and microencapsulation (*i.e.,* repackaging); and conduct sorting and segregating of MLLW, bench-scale mercury amalgamation of MLLW, and/or dispose of this waste at the Area 5 RWMC, as appropriate. In the future and as needed, DOE may use disposal space in Area 3, subject to detailed discussions with the State of Nevada. This space may be needed for disposal of LLW, large onsite remediation debris or soils from cleanup of DOE/NNSA sites within the State of Nevada and would be limited to in-state generated waste. DOE/NNSA will store up to 19,000 cubic feet of onsite-generated transuranic (TRU) waste at the TRU pad at the Area 5 RWMC pending offsite disposal. DOE/NNSA will continue to operate the Area 23 Solid Waste Disposal Site and the U10c Solid Waste Disposal Site, disposing of up to 8,500,000 cubic feet of sanitary solid waste expected to be generated at the NNSS. Subject to regulatory permitting, DOE/NNSA will construct new sanitary solid waste disposal facilities as needed in Area 23 and develop a new solid waste disposal facility in Area 25 to support environmental restoration activities. (Appendix A, A.2.2.1)

*Environmental Restoration Program*

From the No Action Alternative, DOE/NNSA will continue, in compliance with the Federal Facility Agreement and Consent Order (FFACO) to identify, characterize, remediate, and decontaminate and decommission industrial sites as necessary; continue to monitor and remediate sites that are the responsibility of the Defense Threat Reduction Agency at the NNSS, in accordance with the FFACO; and continue to conduct the Borehole Management Program. (Appendix A, A.1.2.2)

From the Expanded Operations Alternative, DOE/NNSA will, as part of its Underground Test Area Activity, continue to monitor groundwater from existing wells, drill new groundwater characterization and monitoring wells, develop groundwater flow and transport models, and continue to evaluate closure strategies at an accelerated pace; and as part of its Soils Project, in compliance with the FFACO, identify and characterize areas with contaminated soils and perform corrective actions with potentially stricter cleanup standards (resulting in larger volumes of waste). (Appendix A, A.2.2.2)

**Nondefense Mission Decisions**

*General Site Support and Infrastructure Program*

From the Expanded Operations Alternative, DOE/NNSA will continue to maintain and repair its infrastructure at the NNSS, RSL, NLVF, and the TTR; maintain the existing infrastructure, provide site security, and manage all applicable existing permits and agreements and will additionally construct a new, approximately 85,000-square-foot, consolidated security building in Area 23 of the NNSS and evaluate and either demolish or repurpose the existing security facilities; replace at the same operating voltage the existing NNSS 138-kilovolt electrical transmission system between Mercury Switching Center in Area 23 and Valley Substation in Area 2 to increase the capacity of the system from about 40 MW to 100 MW; and upgrade the telecommunication system on the NNSS to better integrate wired and wireless systems. (Appendix A, A.2.3.1)

From the Reduced Operations Alternative, DOE/NNSA will maintain only critical infrastructure within NNSS Areas 18, 19, 20, 29, and 30 (including certain communications facilities, electrical transmission lines and substations, and Well 8), maintaining roads within these areas only to provide access to the infrastructure and environmental restoration sites. (Appendix A, A.3.3.1)

*Conservation and Renewable Energy Program*

From the No Action Alternative, DOE/NNSA will continue to identify and implement conservation measures and renewable energy projects in accordance with applicable Executive Orders and DOE Orders in areas including energy efficiency, water conservation, transportation and fleet management, and high-performance and sustainable buildings. (Appendix A, A.1.3.2)

From the Expanded Operations Alternative, DOE/NNSA will construct a photovoltaic solar power system up to 5 MW near the Area 6 Construction Facilities, which will provide electrical power for onsite consumption. (Appendix A, A.2.3.2)

*Other Research and Development Programs*

From the No Action Alternative, DOE/NNSA will continue to support the DOE National Environmental Research Park Program and other non-DOE/NNSA research and development activities in all areas of the NNSS. (Appendix A, A.1.3.3)

**Basis for Decision**

In making its decision, DOE/NNSA considered potential environmental impacts of operations and activities, current and future mission needs, technical and security considerations, availability of resources, compatibility with current and future missions of the DOE/NNSA, and public comments on the Draft and Final NNSS SWEIS. In

doing so, DOE/NNSA considered mission requirements established by law; contemporary goals and objectives identified in site-level planning documents; as well as anticipated funding levels for DOE/NNSA and other users of the NNSS and offsite locations, such as the U.S. Department of Homeland Security. Through the NNSS SWEIS, DOE/NNSA considered the potential environmental impacts that could result from the implementation of each proposed program, capability, project and activity, and how it might accomplish its underlying current and future mission requirements in a manner that minimizes adverse environmental impacts.

**Mitigation Measures**

All practicable means to avoid or minimize environmental harm have been and will continue to be adopted and employed in the continued operation of the NNSS and other offsite DOE/NNSA facilities in the State of Nevada. DOE/NNSA will follow Federal environmental laws and DOE Orders and regulations, and utilize its Environmental Management System to ensure that environmental impacts are systematically identified, controlled, and monitored. Whenever possible, mitigation measures will be implemented to minimize those impacts. DOE/NNSA will implement mitigation strategies through habitat conservation measures such as revegetation; protection of cultural resources with early planning and avoidance; waste minimization and energy conservation; and greater inclusion of culturally affiliated American Indian Tribes in monitoring and conducting traditional ceremonies to benefit the health of the land. DOE/NNSA considers all of these measures to be viable means to mitigate adverse environmental impacts, and will apply the applicable strategies as specific programs, capabilities, projects, and activities are conducted.

Issued at Washington, DC, this 15th day of December 2014.

**Frank G. Klotz,**

*Under Secretary for Nuclear Security, Administrator/National Nuclear Security Administration.*

## Appendix: Public Comments Received After the Publication of the Final NNSS SWEIS

DOE/NNSA received four comment letters regarding the Final NNSS SWEIS. These letters were received from the State of Nevada Nuclear Project Office, Clark County, Nye County, and the City of Las Vegas. A letter from the EPA was also received after the completion of the NNSS SWEIS.

DOE/NNSA considered all comments contained in these letters. DOE/NNSA determined that none of these comments identify or present new information that would warrant a supplement to the Final NNSS SWEIS or other additional NEPA analysis. Most of these comments are similar to, and in many cases the same as, comments submitted on the Draft NNSS SWEIS, to which DOE/NNSS responded in the Final NNSS SWEIS (Volume 3, Comment Response Document). Regarding transportation impact comments submitted by the State, county and local governments on the Final NNSS SWEIS, shipments of low-level radioactive waste (LLW) and mixed low-level radioactive waste (MLLW) to the NNSS for disposal will continue to be done in accordance with commitments made to the State of Nevada and provisions of the NNSS waste acceptance criteria regarding routing and related matters associated with such shipments. The discussion below summarizes comments from these letters not raised on the Draft NNSS SWEIS and presents DOE/NNSA's responses.

*Comment.* The impacts of DOE/NNSA's Preferred Alternative, described in Section 3.4 of the Final NNSS SWEIS, were not adequately analyzed.

*Response.* As addressed in Section 3.4 of the Final NNSS SWEIS, the Preferred Alternative is a hybrid composed of elements of the three alternatives that were examined in detail in the Draft NNSS SWEIS. DOE/NNSA determined, by resource area, that the potential environmental consequences of the Preferred Alternative would fall within the range of impacts reported in the NNSS SWEIS.

Further, there would be no synergistic effects resulting in unique impacts stemming from the hybrid Preferred Alternative. The potential environmental impacts resulting from implementation of the Preferred Alternative are displayed in Table S–1 and 3–3 of the Final NNSS SWEIS, including activities for which there is insufficient information available to conduct a project-specific NEPA review.

*Comment.* The Final NNSS SWEIS does not address the potential construction of a MLLW Treatment Facility at the NNSS.

*Response.* Construction of a new MLLW treatment facility within the Area 5 RWMC is not envisioned at this time. If a need for such a facility is identified in the future, DOE/NNSA will complete the appropriate NEPA review.

*Comment.* The Final NNSS SWEIS does not include estimates of criteria and hazardous air pollutants from rail and intermodal (train to truck) transportation in Tables 5–34, 5–39, and 5–42.

*Response.* Tables 5–34, 5–39, and 5–42 present detailed data that include analytic results on criteria and hazardous air pollutants. In addition, Tables 5–35, 5–40 and 5–43 of the Final NNSS SWEIS present the data in a different format, including estimated emissions of criteria and hazardous air pollutants from both the all-truck transport scenario and the primarily-rail transport scenario (intermodal train to truck transport) that would occur under each of the alternatives.

*Comment.* The Final NNSS SWEIS fails to evaluate impacts that would be associated with the proposed Greater-than-Class C Disposal Facility.

*Response.* The cumulative impacts analysis (Section 6.2.1.1) of the Final NNSS SWEIS evaluated the potential environmental impacts associated with a Greater-than-Class C Radioactive Waste Disposal Facility at the NNSS should DOE select the NNSS site for such a facility. The data used were taken from the *Draft Environmental Impact Statement for the Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC-Like Waste* (DOE/EIS–0375–D), issued in February 2011. Prior to selecting a site for the disposal of GTCC low-level radioactive waste and GTCC-like waste, DOE will complete the appropriate NEPA review.

[FR Doc. 2014–30594 Filed 12–29–14; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2014–0743; FRL–9920–95–OAR]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; Protection of Stratospheric Ozone: Critical Use Exemption From the Phaseout of Methyl Bromide (Renewal); EPA ICR No. 2031.07, OMB Control No. 2060–0482

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA), this document announces that the Environmental Protection Agency (EPA) is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, 2031.06, is scheduled to expire on June 30, 2015. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before March 2, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0743 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* EPA–HQ–OAR–2014–0743, Environmental Protection Agency, Mail Code: 6205T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

• *Hand Delivery:* EPA–HQ–OAR–2014–0743, Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2014–0743. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

**FOR FURTHER INFORMATION CONTACT:** Jeremy Arling, Stratospheric Protection Division, Office of Atmospheric Programs, (6205T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9055; fax number: (202) 343–2338; email address: *arling.jeremy@epa.gov.* You may also visit the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *www.epa.gov/ozone/strathome.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

**SUPPLEMENTARY INFORMATION:**

## How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2014–0743, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for Air and Radiation Docket is 202–566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

## What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## What information collection activity or ICR does this apply to?

*Affected entities:* Entities potentially affected by this action are producers, importers, distributors, and custom applicators of methyl bromide, organizations, consortia, and associations of methyl bromide users, as well as individual methyl bromide users.

*Title:* Agency Information Collection Activities; Proposed Collection; Comment Request; Protection of Stratospheric Ozone: Critical Use Exemption From the Phaseout of Methyl Bromide (Applications, Recordkeeping, and Periodic Reporting) (Renewal).

*ICR numbers:* EPA ICR No. 2031.07, OMB Control No. 2060–0482.

*ICR status:* EPA ICR 2031.06 is currently scheduled to expire on June 30, 2015. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* EPA is seeking to renew EPA ICR 2031.06 which allows EPA to collect CUE applications from regulated entities on an annual basis, and which

requires the submission of data from regulated industries to the EPA and requires recordkeeping of key documents to ensure compliance with the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and the CAA.

Entities applying for this exemption are asked to submit to EPA applications with necessary data to evaluate the need for a critical use exemption. This information collection is conducted to meet U.S. obligations under Article 2H of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). The information collection request is required to obtain a benefit under Section 604(d)(6) of the CAA, added by Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105–277; October 21, 1998).

Since 2002, entities have applied to EPA for a critical use exemption that would allow for the continued production and import of methyl bromide after the phaseout in January 2005. These exemptions are for consumption only in those agricultural sectors that have demonstrated that there are no technically or economically feasible alternatives to methyl bromide. The applications are rigorously assessed and analyzed by EPA staff, including experts from the Office of Pesticide Programs. On an annual basis, EPA uses the data submitted by end users to create a nomination of critical uses which the U.S. Government submits to the Protocol's Ozone Secretariat for review by an international panel of experts and advisory bodies. These advisory bodies include the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP). The uses authorized internationally by the Parties to the Protocol are made available in the U.S. on an annual basis.

The applications will enable EPA to:

1. Maintain consistency with the Protocol by supporting critical use nominations to the Parties to the Protocol, in accordance with paragraph 2 of Decision IX/6 of the Protocol;

2. Ensure that critical use exemptions comply with section 604(d)(6);

3. Provide EPA with necessary data to evaluate the technical and economic feasibility of methyl bromide alternatives in the circumstance of the specific use, as presented in an application for a critical use exemption;

The reported data will enable EPA to:

1. Ensure that critical use exemptions comply with Section 604(d)(6);

2. Maintain compliance with the Protocol requirements for annual data submission on the production of ozone depleting substances;

3. Analyze technical use data to ensure that exemptions are used in accordance with requirements included in the annual authorization rulemakings.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, subpart b, and will be disclosed only if EPA determines that the information is not entitled to confidential treatment. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203). Individual reporting data may be claimed as sensitive and will be treated as confidential information in accordance with procedures outlined in 40 CFR part 2.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.0 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes 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 which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The annual application, reporting, and recordkeeping burden is as follows: 15 applicants to the critical use exemption program at 570 hours per year; 4 producers and importers at a total of 88 hours per year (quarterly reporting); 50 distributors and pesticide applicators at 612 hours per year (annual reporting); and 1,000 end users at 325 hours per year (periodic certification of purchases of critical use methyl bromide at the time of each purchase). The total industry burden is therefore 1,595 hours per year.

The annual public application burden for this collection of information is estimated to average 38 hours per response (570 hours divided by 15 responses). The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.64 hours per response (1,025 hours divided by 1,614 responses). Overall, the total annual public burden (application, reporting, and recordkeeping) for this collection of information is estimated to average 1.0 hours per response (1,595 hours divided by 1,629 responses).

The total annual labor cost burden associated with information collection request is $624,721. EPA estimates the costs as follows: Application costs totaling $80,883 per year, recordkeeping and reporting costs totaling $506,814 per year, and self-certification by producers, importers, distributors, and end users costing $37,024 per year. EPA estimates the capital costs to be $0.

**Are there changes in the estimates from the last approval?**

There is a decrease of 1,663 hours in the total estimated respondent burden compared with the burden currently approved by OMB. The primary reason for the decrease in burden hours is a decrease in the number of applicants and end users as well as distributors of methyl bromide. The CUE Allocation rule for 2014/2015 removed minor reporting and recordkeeping requirements related to critical stock allowances. In addition, after December 31, 2014, when methyl bromide is phased out in developing countries, certain reporting requirements related to the production and export of methyl bromide to those countries are no longer applicable.

**What is the next step in the process for this ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: December 15, 2014.

**Drusilla Hufford,**

*Director, Stratospheric Protection Division.*

[FR Doc. 2014–30603 Filed 12–29–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OW–2008–0719; FRL–9921–05–OW]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Effluent Guidelines and Standards for the Airport Deicing Category

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Effluent Guidelines and Standards for the Airport Deicing Category'' (EPA ICR No. 2326.02, OMB Control No. 2040–0285) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through 03/31/2015. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before March 2, 2015.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OW–2008–0719, online using *www.regulations.gov* (our preferred method), by email to *ow-docket@epa.gov* (Identify Docket ID No. EPA–HQ–OW–2008–0719 in the subject line), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Sarita Hoyt, State and Regional Branch, Water Permits Division, OWM Mail Code: 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–1471; email address: *hoyt.sarita@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* This draft ICR calculates the burden and costs associated with information collection and reporting activities required by EPA's Effluent Limitations Guidelines and New Source Performance Standards for the Airport Deicing Category (40 CFR part 449.10 and 449.20). Respondents affected by this information collection request are covered by either EPA's Multi-Sector General Permit (MSGP), an equivalent state stormwater general permit, or an individual stormwater permit, and the NPDES permitting authorities receive, process, and review permit applications, and Notices of Intent (NOIs). Permitting authorities will also process and review certifications of non-use of urea-based deicers, and monitoring data as applicable.

*Form Numbers:* None.

*Respondents/affected entities:* The respondents affected by this information collection request are commercial airports with at least 1,000 annual non-propeller aircraft departures.

*Respondent's obligation to respond:* Mandatory (40 CFR part 449.10 and 449.20).

*Estimated number of respondents:* 198 (total).

*Frequency of response:* Annual.

*Total estimated burden:* 198 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $6,534 (per year), includes $0 annualized capital or operation & maintenance costs.

*Changes in Estimates:* The above estimates reflect what is currently approved by OMB and they will be updated in the final ICR submission to OMB. EPA expects that there will be little or no change in the burden. The basis for these estimates is provided in the supporting statement.

Dated: December 18, 2014.

**Sheila E. Frace,**

*Acting Director, Office of Wastewater Management.*

[FR Doc. 2014–30518 Filed 12–29–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9920–94–OA]**

### Notification of a Public Teleconference of the Science Advisory Board Chemical Assessment Advisory Committee Augmented for the Review of EPA's Draft Trimethylbenzenes Assessment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public teleconference of the SAB Chemical Assessment Advisory Committee Augmented for the Review of the Draft Trimethylbenzenes Assessment (CAAC–TMB Panel) to reach consensus on it draft peer review of EPA's draft Integrated Risk Information System (IRIS) *Toxicological Review of Trimethylbenzenes* (August 2013 Revised External Review Draft).

**DATES:** The public teleconference will be held on Thursday, January 29, 2015. The teleconference will be held from 2:00 p.m. to 5:00 p.m. (Eastern Standard Time).

*Location:* The teleconference will be conducted by telephone only.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wants further information concerning the

teleconference may contact Mr. Thomas Carpenter, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; via telephone/voice mail (202) 564–4885; fax (202) 565–2098; or email at *carpenter.thomas@epa.gov.* General information concerning the SAB can be found on the SAB Web site at *http://www.epa.gov/sab.*

**SUPPLEMENTARY INFORMATION:**

*Background:* Pursuant to the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App., notice is hereby given that the SAB CAAC–TMB Panel will hold a public teleconference to reach consensus on its draft report on the IRIS *Toxicological Review of Trimethylbenzenes* (August 2013 Revised External Review Draft) and enhancements the agency is implementing to the IRIS program.

The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a federal advisory committee chartered under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The SAB CAAC–TMB Panel held a public meeting on June 17–19, 2014. The purpose of that meeting was to receive a briefing on the EPA's enhancements to the IRIS Program and to develop responses to the peer review charge on the agency's draft IRIS *Toxicological Review of Trimethylbenzenes* (August 2013 Revised External Review Draft). The SAB CAAC TMB Panel held teleconferences on November 5 and 7, 2014, to discuss and revise its draft report. The purpose of this public teleconference is for the Panel to reach consensus on a draft report entitled *Science Advisory Board Review of the IRIS Draft (12/22/2014) Toxicological Review of Trimethylbenzenes.*

*Availability of Meeting Materials:* Additional background on this SAB activity, the teleconference agenda, draft panel report, and other materials for the teleconferences will be posted on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/IRIS%20Trimethylbenzenes?OpenDocument.*

*Procedures for Providing Public Input:* Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the group conducting this SAB activity or the meeting materials. Input from the public to the SAB will have the most impact if it consists of comments that provide specific scientific or technical information or analysis for the SAB to consider. Members of the public wishing to provide comment should contact the Mr. Thomas Carpenter at the contact information provided above.

*Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker. To be placed on the list of registered speakers for the January 29, 2015, teleconference, interested parties should notify Mr. Thomas Carpenter, DFO, by email no later than January 21, 2015.

*Written Statements:* Written statements to be provided to the panel for the teleconference should be provided to the DFO, preferably via email, by January 29, 2015. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

*Accessibility:* For information on access or services for individuals with disabilities, please contact Mr. Carpenter at the phone number or email address noted above, preferably at least ten days prior to the teleconference, to give the EPA as much time as possible to process your request.

Dated: December 18, 2014.

**Thomas H. Brennan,**

*Deputy Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 2014–30604 Filed 12–29–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9921–06–Region 3]**

## Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revision for the Commonwealth of Pennsylvania

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of tentative approval and solicitation of requests for a public hearing.

**SUMMARY:** Notice is hereby given in accordance with the provision of Section 1413 of the Safe Drinking Water Act, as amended, and the requirements governing the National Primary Drinking Water Regulations Implementation, 40 CFR part 142, that the Commonwealth of Pennsylvania is revising its approved Public Water System Supervision Program. The Commonwealth has adopted the Lead and Copper Rule Short Term Revisions which will provide for better public health protection by reducing potential reproductive and developmental health risks from lead. The Commonwealth also revised its regulations for issuing variances and exemptions. The Environmental Protection Agency (EPA) has determined that these revisions are no less stringent than the corresponding Federal regulations. EPA is taking action to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

**DATES:** Comments or a request for a public hearing must be submitted by January 29, 2015. This determination shall become effective on January 29, 2015 if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect on his own to hold a hearing, and if no comments are received which cause EPA to modify its tentative approval.

**ADDRESSES:** Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Comments may also be submitted electronically to *Moran.Kelly@epa.gov.* All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch (3WP21), Water Protection Division, U.S. Environmental Protection Agency

Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.

• Bureau of Safe Drinking Water, Pennsylvania Department of Environmental Protection, 11th Floor Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101.

**FOR FURTHER INFORMATION CONTACT:** Kelly Moran at the Philadelphia address given above, telephone (215) 814–2331, fax (215) 814–2302, or email *Moran.Kelly@epa.gov.*

**SUPPLEMENTARY INFORMATION:** All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered; if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by January 29, 2015, a public hearing will be held. A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: December 3, 2014.

**Shawn M. Garvin,**

*Regional Administrator, EPA, Region III.*

[FR Doc. 2014–30601 Filed 12–29–14; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9920–84–OA]**

## Notification of a Joint Public Teleconference of the Chartered Science Advisory Board and the Board of Scientific Counselors and a Public Teleconference of the Chartered Science Advisory Board

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces two public teleconferences: (1) A joint teleconference of the Chartered SAB and Board of Scientific Counselors (BOSC) to discuss a draft report providing advice on implementation of Office of Research and Development's (ORD's) strategic directions for research; and (2) a teleconference of the Chartered SAB to discuss information provided in the agency's Fall 2013 and Spring 2014 regulatory agenda and to review draft SAB reports on the EPA's draft web-based Report on the Environment and the EPA's draft Environmental Justice Technical Guidance.

**DATES:** The public teleconference for the Chartered SAB and the BOSC will be held on Tuesday, January 13, 2015, from 3:00 p.m. to 5:00 p.m. (Eastern Time) and the public teleconference for the Chartered SAB will be held on Friday, January 23, 2015, from 1:00 p.m. to 4:30 p.m. (Eastern Time).

**ADDRESSES:** The public teleconferences will be conducted by telephone only.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing to obtain information concerning the public teleconferences may contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone/voice mail at (202) 564–2218 or at *nugent.angela@epa.gov.* General information about the SAB as well as any updates concerning the teleconferences announced in this notice may be found on the EPA Web site at *http://www.epa.gov/sab.*

**SUPPLEMENTARY INFORMATION:** The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The BOSC was established by the EPA to provide advice, information, and recommendations regarding the ORD research program. The SAB and BOSC are federal advisory committees chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that: (1) The Chartered SAB and Chartered BOSC will hold a joint teleconference to discuss a draft report on future directions for ORD's research programs and (2) the Chartered SAB will hold a public teleconference for two purposes. The first purpose is to discuss information provided in the agency's Fall 2013 and Spring 2014 regulatory agenda, specifically planned actions and their supporting science. The second purpose is to review two draft SAB reports (on the EPA's draft web-based Report on the Environment and the EPA's draft Environmental Justice Technical Guidance). The SAB and BOSC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

*Joint SAB–BOSC teleconference on future directions for ORD's research programs.* On January 13, 2015, the Chartered SAB and Chartered BOSC will discuss a draft report entitled *Strategic Research Planning for 2016–2019: A Joint Report (11/20/14 Draft) of the SAB and ORD BOSC.* The draft report was developed as a result of deliberations at a joint SAB–BOSC meeting on July 24–25, 2014. Information about this advisory activity can be found on the Web at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/ORD%20Strat%20Dir%202016-2019?OpenDocument.*

*Chartered SAB teleconference to discuss EPA planned actions and review two draft SAB reports.* On January 23, 2015, the chartered SAB will hold a teleconference for two purposes. The first purpose is to discuss information provided in the agency's Fall 2013 and Spring 2014 regulatory agenda, specifically planned actions and their supporting science. The Chartered SAB will conclude discussions begun at an SAB public teleconference on June 11, 2014 (79 FR 27604–27605) regarding the Fall 2013 Unified (Regulatory) Agenda and Regulatory Plan. Information about this advisory activity can be found on the Web at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/SAB%20Fall%202013%20Agenda%20Disc?OpenDocument.* The Chartered SAB will also discuss recommendations regarding the Spring 2014 Unified (Regulatory) Agenda and Regulatory Plan. Information about this advisory activity can be found on the Web at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/SAB%20Spring%202014%20Agenda%20Disc?OpenDocument.*

The second purpose of the call on January 23, 2015, is for the SAB to review two draft SAB reports. Quality review is a key function of the chartered SAB. Draft reports prepared by SAB committees, panels, or work groups must be reviewed and approved by the chartered SAB before transmittal to the EPA Administrator. Consistent with FACA, the chartered SAB makes a determination in a public meeting about each draft report and determines whether the report is ready to be transmitted to the EPA Administrator.

The first Chartered SAB review will focus on a draft report on the scientific and technical merit of the EPA's draft Web-based Report on the Environment with particular attention to its adoption

of a sustainability framework and new sustainability indicators, as well as the online format as a tool to communicate to scientists, policy makers and public audiences. The SAB undertook this review at the request of the EPA's Office of Research and Development. Information about this advisory activity can be found on the Web at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/ROE%202014?OpenDocument.*

The second Chartered SAB review will focus on an SAB draft report reviewing the EPA's draft Environmental Justice Technical Guidance. The EPA developed the guidance to assist agency staff on how to assess disproportionate environmental and public health impacts of proposed rules and actions on minority, low income and indigenous populations in a variety of regulatory contexts. The EPA's Office of Policy requested the SAB's assessment of the appropriateness and scientific soundness of the technical guidance. Information about this advisory activity can be found on the Web at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/EJ%20Technical%20Guidance?OpenDocument.*

*Availability of Meeting Materials:* The agendas and materials in support of these teleconferences will be available on the EPA Web site at *http://www.epa.gov/sab* in advance of the teleconferences.

*Procedures for Providing Public Input:* Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for SAB panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the Designated Federal Officer as noted above.

*Oral Statements:* In general, individuals or groups requesting an oral presentation at a teleconference will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Dr. Angela Nugent, DFO, in writing (preferably via email) at the contact information noted above one week before each of the teleconferences to be placed on the list of public speakers.

*Written Statements:* Written statements should be supplied to the DFO, preferably via email, at the contact information noted above one week before each of the teleconferences so that the information may be made available to the Board members for their consideration. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

*Accessibility:* For information on access or services for individuals with disabilities, please contact Dr. Angela Nugent at (202) 564–2218 or *nugent.angela@epa.gov.* To request accommodation of a disability, please contact Dr. Nugent preferably at least ten days prior to the teleconference to give EPA as much time as possible to process your request.

Dated: December 15, 2014.

**Thomas H. Brennan,**

*Deputy Director, EPA Science Advisory Staff Office.*

[FR Doc. 2014–30403 Filed 12–29–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9921–07–Region 6]**

## Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges From Horse, Cattle and Dairy Concentrated Animal Feeding Operations (CAFOs) in New Mexico (Except Indian Country)

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed permit reissuance.

**SUMMARY:** Environmental Protection Agency (EPA) Region 6 Water Quality Protection Division is today proposing for public comment the reissuance of a National Pollutant Discharge Elimination System general permit (NMG010000) for discharges from eligible owners/operators of existing concentrated animal feeding operations (CAFOs), in New Mexico, except those discharges on Indian Country. CAFOs discharging on Indian Country would be required to apply for an individual permit.

This permit was originally issued with an effective date of September 3, 2009, and an expiration date of September 2, 2014. Conditions from the 2009 permit are continued with the following changes proposed as part of this reissuance: (1) Removing eligibility for coverage for ''New sources'' under the proposed permit, (2) adding on-site rainfall measurement and record keeping, and (3) adding requirement for paperless submittal of application documents (NOIs and NMPs).

**DATES:** Comments must be submitted in writing to EPA on or before March 2, 2015.

**ADDRESSES:** Comments should be submitted to Ms. Evelyn Rosborough via email: *rosborough.evelyn@epa.gov,* or may be mailed to Ms. Evelyn Rosborough, Environmental Protection Agency, Water Quality Protection Division (6WQ–NP), 1445 Ross Ave., Suite 1200, Dallas, TX 75202.

**DATES:** *Public Meeting:* An informal public meeting is scheduled. The meeting will include a presentation on the proposed permit followed by the opportunity for questions and answers. Written, but not oral, comments for the administrative record will be accepted at the public meeting.

*Date:* February 10, 2015.

*Time:* 2 p.m. to 4 p.m.

*Place:* Eastern New Mexico State University—Roswell, Occupational Technology Center, Seminar Room 124, 20 West Mathis, Roswell, New Mexico 88202–6000.

*Public Hearings:* No public hearing is scheduled at this time; however, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the proposed permit.

If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed permit at the public hearing.

**SUPPLEMENTARY INFORMATION:** A copy of the proposed permit, fact sheet, and this **Federal Register** Notice may be found on the EPA Region 6 Web site: *http://www.epa.gov/region6/water/npdes/cafo/index.htm,* or obtained by contacting Ms. Rosborough via email at *rosborough.evelyn@epa.gov* or 214–665–2145. The Agency's current administrative record on the proposal is available for examination at the Region's Dallas offices during normal working hours by providing Ms. Rosborough 24 hours advance notice. When the final general permit is issued, notice will be published in the **Federal Register**. The final general permit will be effective on the date specified in the **Federal Register** and expires five years from that date.

**Other Legal Requirements**

A. State Certification. Under section 401(a)(1) of the CWA, EPA may not issue an NPDES permit until the State in which the discharge will occur grants or waives certification to ensure compliance with appropriate requirements of the CWA and State law. EPA will seek certification from the New Mexico Environment Department prior to issuing a final permit.

B. Endangered Species. Endangered Species Act Section 7(a)(2) consultation between EPA and the U.S. Fish and Wildlife Service concluded in May 29, 2009, with USFWS concurring with EPA's biological evaluation that reissuance of the 2009 New Mexico CAFO general permit ''might affect but would be unlikely to adversely affect'' several aquatic and aquatic dependent species federally listed in the state. This draft permit continues those conditions of eligibility for applicants in Bernalillo, Chavez, Eddy, Sandoval, San Juan and Valencia Counties that were developed in consultation and made part of the 2009 general permit. EPA has reviewed listings since 2009 of new species and critical habitat and has determined that reissuance of the permit with the prior agreed conditions is not likely to adversely affect any listed threatened or endangered species or designated critical habitat. EPA will meet its responsibility to fulfill the section 7 of the ESA requirements prior to reissuance of this general permit.

C. Historic Preservation. EPA determined, under Section 106 of the National Historic Preservation Act of 1966 (NHPA), that issuance of the 2009 general permit was a federal undertaking without adverse effects. EPA finds no changes to this determination and will ensure that its NHPA Section 16 obligation is fulfilled regarding reissuance of the general permit.

E. Regulatory Flexibility Act. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. The permit reissuance proposed today is not a ''rule'' subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis on the promulgation of the 2003 NPDES Permit Regulation and Effluent Limitation Guidelines and Standards for concentrated animal feeding operations (CAFOs) on which many of the permit's effluent limitations are based. In 2013, EPA completed review of the Guidelines and Standards pursuant to section 610 of the Regulatory Flexibility Act (RFA) and concluded that (1) there is a continued need for the CAFO regulations, and (2) revisions to minimize the regulations' impacts on small entities are not warranted at this time.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: December 18, 2014.

**William K. Honker,**

*Director, Water Quality Protection Division, EPA Region 6.*

[FR Doc. 2014–30519 Filed 12–29–14; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R04–OAR–2014–0510 and EPA–R04–OAR–2014–0487; FRL–9920–93–OAR]**

## Notice of Issuance of Final Air Permits for Statoil Gulf Services, LLC and Anadarko Petroleum Corporation

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final actions.

**SUMMARY:** This notice is to announce that the Environmental Protection Agency (EPA) issued a final Outer Continental Shelf (OCS) air quality permit numbered OCS–EPA–R4012–M1 for Statoil Gulf Services, LLC (Statoil) on August 14, 2014, and an OCS air quality permit numbered OCS–EPA–R4015 for Anadarko Petroleum Corporation (Anadarko) on September 16, 2014.

**ADDRESSES:** The final permits, the EPA's response to public comments for these permits, if applicable, and supporting information are available at *http://www.epa.gov/region4/air/permits/index.htm.* These materials are also available for review at the EPA Regional Office and upon request in writing. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule an inspection or to submit a written request for copies of these materials. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Please contact Ms. Heather Ceron, Air Permits Section Chief, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9185. Ms. Ceron can also be reached via electronic mail at *ceron.heather@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On July 9, 2014, EPA Region 4 requested public comments on a preliminary determination to issue an OCS air permit modification for Statoil's existing OCS air quality permit numbered OCS–EPA–R4012. During the public comment period, which ended on August 8, 2014, the EPA received no comments.

On June 20, 2014, EPA Region 4 requested public comments on a preliminary determination to issue an OCS air quality permit for the Anadarko EGOM (Eastern Gulf of Mexico) project. The EPA received a total of 14 comments from 1 commenter (Anadarko) during the public comment period, which closed on July 21, 2014.

The EPA reviewed each comment received for the Anadarko EGOM project and prepared a Response to Comments document. Since no comments were received for the Statoil project, a Response to Comment document was not prepared. After consideration of the expressed view of all interested persons, the pertinent federal statutes and regulations, the applications and supplemental information submitted by the applicants, and additional material relevant to the applications and contained in the Administrative Records, the EPA made final determinations in accordance with 40 CFR parts 55 and 71 to issue final air permits.

The EPA must follow the administrative procedures in 40 CFR part 124 used to issue PSD permits

when processing OCS permit applications under Part 55. 40 CFR 55.6(a)(3). The EPA must also follow the administrative procedures of 40 CFR part 71 when issuing permits to OCS sources subject to Title V requirements. 40 CFR 71.4(d). Under 40 CFR 124.19(l)(3) and 40 CFR 71.11(l)(7), notice of any final Agency action regarding a subject permit must be published in the **Federal Register**. Section 307(b)(1) of the CAA provides for review of final Agency action that is locally or regionally applicable in the United States Court of Appeals for the appropriate circuit. Such a petition for review of final Agency action must be filed on or before 11:59 p.m. on the 60th day from the date of notice of such action in the **Federal Register**. For purposes of judicial review under the CAA, final Agency action occurs when a final permit is issued or denied by the EPA and Agency review procedures are exhausted, per 40 CFR 124.19(l)(2) and 40 CFR 71.11(l)(5).

The Statoil permit became effective on August 14, 2014.

Any person who filed comments on the Anadarko draft permit was provided the opportunity to petition the Environmental Appeals Board by October 15, 2014. No petitions were submitted for this permit. Therefore, the Anadarko permit became effective on October 16, 2014.

Dated: December 11, 2014.

**Beverly H. Banister,**

*Director, Air, Pesticides, and Toxics, Management Division, Region 4.*

[FR Doc. 2014–30602 Filed 12–29–14; 8:45 am]

**BILLING CODE 6560–50–P**

## EXPORT-IMPORT BANK OF THE UNITED STATES

**[Public Notice: 2014–0053]**

### Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP088920XX

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice.

**SUMMARY:** This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

**DATES:** Comments must be received on or before January 26, 2015 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

**ADDRESSES:** Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2014–0053 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2014–0053 on any attached document.

*Reference:* AP088920XX.

**Purpose and Use**

*Brief description of the purpose of the transaction:*

To support the export of U.S.-manufactured aircraft to Vietnam.

*Brief non-proprietary description of the anticipated use of the items being exported:*

To be used for international passenger air service to and from Vietnam.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

**Parties**

*Principal Supplier:* The Boeing Company.

*Obligor:* Vietnam Airlines.

*Guarantor(s):* None.

**Description of Items Being Exported**

Boeing 787 aircraft.

*Information on Decision:* Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/.*

*Confidential Information:* Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

**Lloyd Ellis,**

*Program Specialist, Office of the General Counsel.*

[FR Doc. 2014–30477 Filed 12–29–14; 8:45 am]

**BILLING CODE 6690–01–P**

## EXPORT-IMPORT BANK

**[Public Notice: 2014–0052]**

### Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP088936XX

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice.

**SUMMARY:** This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter).

Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

**DATES:** Comments must be received on or before January 26, 2015 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

**ADDRESSES:** Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2014–0052 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2014–0052 on any attached document.

*Reference:* AP088936XX.

*Purpose and use:*

*Brief description of the purpose of the transaction:*

To support the export of U.S.-manufactured aircraft to the Republic of Korea.

*Brief non-proprietary description of the anticipated use of the items being exported:*

To be used for the transportation of passengers and air cargo between the Republic of Korea and other countries.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported maybe used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

*Parties:*

*Principal Supplier:* The Boeing Company.

*Obligor:* Korean Air Lines Co., Ltd.

*Guarantor(s):* None.

*Description of items being exported:* Boeing 747 passenger and cargo aircraft and B777 cargo aircraft.

*Information on decision:* Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/.*

*Confidential information:* Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

**Lloyd Ellis,**

*Program Specialist, Office of the General Counsel.*

[FR Doc. 2014–30474 Filed 12–29–14; 8:45 am]

**BILLING CODE 6690–01–P**

## EXPORT-IMPORT BANK

**[Public Notice: 2014–0054]**

### Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP088920XX

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice.

**SUMMARY:** This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter).

Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

**DATES:** Comments must be received on or before January 26, 2015 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

**ADDRESSES:** Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2014–0054 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2014–0054 on any attached document.

*Reference:* AP088941XX.

*Purpose and Use:*

*Brief description of the purpose of the transaction:*

To support the export of U.S.-manufactured commercial aircraft to Turkey.

*Brief non-proprietary description of the anticipated use of the items being exported:*

To be used for passenger air service between Turkey and other countries. To the extent that Ex-Im Bank is reasonably aware, the items being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

*Parties:*

Principal Suppliers: The Boeing Company.

Obligor: Turk Hava Yollari A.O.

Guarantor(s): N/A.

*Description of Items Being Exported:*

Boeing 777 aircraft.

*Information on Decision:* Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/.*

*Confidential Information:* Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

**Lloyd Ellis,**

*Program Specialist, Office of the General Counsel.*

[FR Doc. 2014–30476 Filed 12–29–14; 8:45 am]

**BILLING CODE 6690–01–P**

## EXPORT-IMPORT BANK

**[Public Notice: 2014–0055]**

### Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP088920XX

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice.

**SUMMARY:** This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

**DATES:** Comments must be received on or before January 26, 2015 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

**ADDRESSES:** Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2014–0055 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2014–0055 on any attached document.

*Reference:* AP088675XX.

*Purpose and use:*

*Brief description of the purpose of the transaction:*

To support the export of U.S.-manufactured commercial aircraft and spare jet engines to Turkey.

*Brief non-proprietary description of the anticipated use of the items being exported:*

To be used for passenger air service between Turkey and other countries. To the extent that Ex-Im Bank is reasonably aware, the items being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

*Parties:*

Principal Suppliers: The Boeing Company and General Electric.

Obligor: Turk Hava Yollari A.O.

Guarantor(s): N/A.

*Description of Items Being Exported:*

Boeing 737 aircraft, Boeing 777 aircraft, and CF6 and GE90 engines.

*Information on Decision:* Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/.*

*Confidential Information:* Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

**Lloyd Ellis,**

*Program Specialist, Office of the General Counsel.*

[FR Doc. 2014–30475 Filed 12–29–14; 8:45 am]

**BILLING CODE 6690–01–P**

## EXPORT-IMPORT BANK

### Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank).

**SUMMARY:** The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the report on competitiveness of the Export-Import Bank of the United States to Congress.

*Time and Place:* Thursday, January 15, 2015 from 11:00 a.m.–3:00 p.m. A break for lunch will be at the expense of the attendee. Security processing will be necessary for reentry into the building. The meeting will be held at Ex-Im Bank in the Main Conference Room—11th floor, 811 Vermont Avenue NW., Washington, DC 20571.

*Agenda:* Agenda items include a briefing for the Advisory Committee members on Bank priority goals for 2015, a discussion of the roles and responsibilities of Advisory Committee members, and an ethics briefing.

*Public Participation:* The meeting will be open to public participation, and 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building; you may contact Niki Shepperd at *niki.shepperd@exim.gov* to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please email Niki Shepperd at *niki.shepperd@exim.gov* prior to January 12, 2015.

*Members of the Press:* For members of the Press planning to attend the meeting, a photo ID must be presented at the guard's desk as part of the clearance process into the building; please email Niki Shepperd at *niki.shepperd@exim.gov* to be placed on an attendee list.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Niki Shepperd, 811 Vermont Ave. NW., Washington, DC 20571, at *niki.shepperd@exim.gov.*

**Lloyd Ellis,**

*Program Specialist, Office of the General Counsel.*

[FR Doc. 2014–30473 Filed 12–29–14; 8:45 am]

**BILLING CODE 6690–01–P**

## FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

### Notice of Issuance of Statement of Federal Financial Accounting Standards 47

**AGENCY:** Federal Accounting Standards Advisory Board.

**ACTION:** Notice.

*Board Action:* Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standard 47, *Federal Entity*.

The Standard is available at *http://www.fasab.gov/accounting-standards/authoritative-source-of-gaap/accounting-standards/fasab-handbook/*. For assistance in accessing the document contact FASAB at (202) 512–7350.

**FOR FURTHER INFORMATION CONTACT:** Wendy M. Payne, Executive Director, 441 G St. NW., Mail Stop 6H19, Washington, DC 20548 or call 202–512–7350.

**Authority:** Federal Advisory Committee Act, Pub. L. 92–463.

Dated: December 22, 2014.

**Charles Jackson,**

*Federal Register Liaison Officer.*

[FR Doc. 2014–30595 Filed 12–29–14; 8:45 am]

**BILLING CODE 1610–02–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

*Agreement No.:* 002206–007.

*Title:* California Association of Port Authorities—Northwest Marine Terminal Association Terminal Discussion Agreement.

*Parties:* California Association of Port Authorities and Northwest Marine Terminal Association.

*Filing Party:* Patti A. Fulghum, Executive Officer; Northwest Marine Terminal Association; P.O. Box 1283, Issaquah, WA 98027.

*Synopsis:* The amendment reflects the addition of the Port of Pasco, Washington, as a new member of the Northwest Marine Terminal Association.

*Agreement No.:* 009335–008.

*Title:* Northwest Marine Terminal Association, Inc. Agreement.

*Parties:* Port of Anacortes; Port of Astoria; Port of Bellingham; Port of Coos Bay; Port of Everett; Port of Grays Harbor; Port of Kalama; Port of Longview; Port of Olympia; Port of Port Angeles; Port of Portland; Port of Seattle; Port of St. Helens; Port of Tacoma; Port of Vancouver, USA; and Port of Pasco.

*Filing Party:* Patti A. Fulghum, Executive Officer; Northwest Marine Terminal Association; P.O. Box 1283, Issaquah, WA 98027.

*Synopsis:* The amendment adds the Port of Pasco, Washington as member to the agreement.

*Agreement No.:* 010099–060.

*Title:* International Council of Containership Operators.

*Parties:* A.P. Moller-Maersk A/S; China Shipping Container Lines Co., Ltd.; CMA. CGM, S.A.; Compañía Chilena de Navegación Interoceánica S.A.; Compania SudAmericana de Vapores S.A.; COSCO Container Lines Co. Ltd; Crowley Maritime Corporation; Evergreen Marine Corporation (Taiwan), Ltd.; Hamburg-Süd KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mediterranean Shipping Co. S.A.; Mitsui O.S.K. Lines, Ltd.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line, Ltd.; Pacific International Lines (Pte) Ltd.; United Arab Shipping Company (S.A.G.); Wan Hai Lines Ltd.; Yang Ming Transport Marine Corp.; and Zim Integrated Shipping Services Ltd.

*Filing Party:* John Longstreth, Esq.; K & L Gates LLP; 1601 K Street NW., Washington, DC 20006–1600.

*Synopsis:* The amendment would delete A.P. Moller-Maersk A/S trading as Maersk Line as a Party and would add Maersk Line A/S as a party to the agreement.

*Agreement No.:* 011707–013.

*Title:* Gulf/South America Discussion Agreement.

*Parties:* BBC Chartering Carriers GmbH & Co. KG, BBC Chartering & Logistic GmbH & Co. KG; Industrial Maritime Carriers L.L.C.; and Seaboard Marine, Ltd.

*Filing Party:* Wade S. Hooker, Esq.; 211 Central Park W; New York, NY 10024.

*Synopsis:* The amendment would add Caytrans BBC LLC as a party to the agreement. The Parties have requested Expedited Review.

*Agreement No.:* 012312–000.

*Title:* INARME/Mitsui OSK Lines Ltd Space Charter Agreement.

*Parties:* Mitsui OSK Lines Ltd and INDUSTRIA ARMAMENTO MERIDIONALE S.P.A. INARME.

*Filing Party:* Eric C. Jeffrey; Nixon Peabody LLP; 401 9th Street NW., Suite 900, Washington, DC 20004.

*Synopsis:* The amendment authorizes INARME to charter space from MOL on an ''as needed/as available'' basis for the transportation of new vehicles in the trade between the United States and North Europe.

By Order of the Federal Maritime Commission.

Dated: December 19, 2014.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2014–30216 Filed 12–29–14; 8:45 am]

**BILLING CODE 6730–01–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 January 16, 2015.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. Michael G. Lewis, individually and as trustee of the W. W. Pete Archbold Trust, Ossian, Indiana, to individually and together as a group acting in concert with the W.W. Pete Archbold Trust, David Lewis, Gary Lewis, Tonya Lewis, Barbara Gehring, Kent Gehring, and Diane Scheumann,* all of Ossian, Indiana; to acquire 10 percent of the voting shares of Ossian Financial Services, Inc., and thereby indirectly acquire control of Ossian State Bank, both of Ossian, Indiana.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Guadalupe Alonzo Cantu, individually and as trustee for Allysa Nichole Cantu, Alexis C. Cantu, GAC 2004 GRAT No. 1, YRC 2004 GRAT No. 1, Alexis C. Cantu UGTM, and Allysa Nichole Cantu UGTM; Yolanda R. Cantu, individually and as trustee for Alexis Cantu; Elvia Cantu Saenz, individually and as trustee of the Alonzo Cantu 2011 Exempt Family Trust; Jesus A. Saenz, individually; Elida F. Cantu, individually; and Victor Haddad, individually, and as trustee of the Alonzo Cantu 2005 Exempt Family Trust and the Yolanda R. Cantu 2005 Exempt Family Trust; all of McAllen, Texas; Samuel David Deanda, Jr., individually and as trustee of the Yolanda R. Cantu 2011 Exempt Family Trust, and Vivian Deanda, individually, both of Mission, Texas; Cantu Ventures, Ltd., Cantu Management, LLC, Alycan, Ltd.,* all of McAllen, Texas; collectively a group acting in concert to retain voting shares of Lone Star National Bancshares-Texas, Inc., McAllen, Texas, and thereby, indirectly retain voting shares of Lone Star National Bank, Pharr, Texas.

Board of Governors of the Federal Reserve System, December 22, 2014.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2014–30353 Filed 12–29–14; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 26, 2015.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Riverview Financial Corporation,* Halifax, PA; to acquire The Citizens National Bank of Meyersdale, Meyersdale, PA, through the merger of The Citizens National Bank of Meyersdale, and thereby indirectly acquire Riverview Bank, Marysville, PA

B. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *First Security Bancorp,* Searcy, Arkansas; to acquire 9.90% percent of the voting shares of CrossFirst Holdings, LLC, Leawood, Kansas, and thereby indirectly increase its interest in CrossFirst Bank, Leawood, Kansas.

C. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

3. *American Bancorporation,* Inc., Sapulpa, Oklahoma; to acquire 100 percent of the voting shares of Pawhuska Financial Corp., and thereby indirectly acquire First National Bank in Pawhuska, both in Pawhuska, Oklahoma.

Board of Governors of the Federal Reserve System, December 22, 2014.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2014–30354 Filed 12–29–14; 8:45 am]

**BILLING CODE 6210–01–P**

## GENERAL SERVICES ADMINISTRATION

**[Notice–CECANF–2015–08; Docket No. 2015–0007; Sequence No. 8]**

### Commission to Eliminate Child Abuse and Neglect Fatalities; Commission to Eliminate Child Abuse and Neglect Fatalities; Announcement of Meeting

**AGENCY:** Commission to Eliminate Child Abuse and Neglect Fatalities.

**ACTION:** Meeting Notice.

**SUMMARY:** The Commission to Eliminate Child Abuse and Neglect Fatalities (CECANF), a Federal Advisory Committee established by the Protect Our Kids Act of 2012, Public Law 112–275, will hold a meeting open to the public on Monday, January 12, 2015 and Tuesday, January 13, 2015 in Phoenix, Arizona.

**DATES:** The meeting will be held on Monday, January 12, 2015, from 8:30 a.m. to 5:30 p.m., and Tuesday, January 13, from 8:30 a.m. to 12:00 p.m. Mountain Standard Time.

**ADDRESSES:** CECANF will convene its meeting at the Sheraton, 340 North 3rd Street, Phoenix, AZ 85004. This site is accessible to individuals with disabilities. The meeting will also be made available via teleconference and/or webinar.

Submit comments identified by ''Notice-CECANF–2015–07,'' by either of the following methods:

- Regulations.gov: *http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by searching for ''Notice–CECANF–2015–08.'' Select the link ''Comment Now'' that corresponds with ''Notice–CECANF–2015–08.'' Follow the instructions provided on the screen. Please include your name, organization name (if any), and ''Notice–CECANF–2015–08'' on your attached document.
- Mail: Commission to Eliminate Child Abuse and Neglect Fatalities, c/o General Services Administration, Agency Liaison Division, 1800 F St. NW., Room 7003D, Washington, DC 20006.

*Instructions:* Please submit comments only and cite ''Notice–CECANF–2015–08'' in all correspondence related to this notice. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Visit the CECANF Web site at *https://eliminatechildabusefatalities.sites.usa.gov/* or contact Ms. Patricia Brincefield, Communications Director, at 202–818–9596, 1800 F St. NW., Room 7003D, Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

#### Background

CECANF was established to develop a national strategy and recommendations for reducing fatalities resulting from child abuse and neglect.

#### Agenda

On January 12, 2015 Commission members will meet to discuss their understanding of the issues of defining and counting child abuse and neglect fatalities and recommendations for addressing them, including: (1) What is the scope of child abuse and neglect fatalities? (2) What are the purposes of counting child abuse and neglect fatalities? (3) What data on child abuse and neglect fatalities are currently collected? (4) What are the limitations of our current data collection efforts? (5) What strategies could be implemented to improve the counting of child abuse and neglect fatalities? (6) Do definitions of child abuse and neglect fatalities need to be standardized? Commission members also will begin discussing the work plans of the six Commission subcommittees and the information that they have obtained to date. On Day 2, Commission members will continue the discussion on the work of the subcommittees.

#### Attendance at the Meeting

Individuals interested in attending the meeting in person or participating by webinar and teleconference must register in advance. To register to attend in person or by webinar/phone, please go to *https://attendee.gotowebinar.com/rt/8552513076968099330* and follow the prompts. Once you register, you will receive a confirmation email with the webinar login and teleconference number. Detailed meeting minutes will be posted within 90 days of the meeting. Members of the public will not have the opportunity to ask questions or otherwise participate in the meeting.

However, members of the public wishing to comment should follow the steps detailed under the heading Addresses in this publication or contact us via the CECANF Web site at *https://eliminatechildabusefatalities.sites.usa.gov/contact-us/*.

Dated: December 19, 2014.

**Amy Templeman,**

*Deputy Director.*

[FR Doc. 2014–30261 Filed 12–29–14; 8:45 am]

BILLING CODE 6820–34–P

## GENERAL SERVICES ADMINISTRATION

**[Notice-FTR 2014–07; Docket 2014–0002; Sequence 38]**

### Privately Owned Vehicle (POV) Mileage Reimbursement Rates

**AGENCY:** Office of Government-Wide Policy (OGP), General Services Administration (GSA).

**ACTION:** Notice of FTR Bulletin 15–02, Calendar Year (CY) 2015 Privately Owned Vehicle (POV) Mileage Reimbursement Rates and Standard Mileage Rate for Moving Purposes (Relocation Allowances).

**SUMMARY:** The General Services Administration's (GSA) annual privately owned vehicle (POV) mileage reimbursement rate reviews have resulted in new CY 2015 rates for the use of privately owned automobiles (POAs), POAs when a Government owned automobile (GOA) is authorized, privately owned motorcycles, and privately owned airplanes for official purposes. Additionally, the POV rate used in conjunction with official relocation will change. FTR Bulletin 15–02 establishes the new CY 2015 POV mileage reimbursement rates for official temporary duty and relocation travel ($0.575 for POAs, $0.23 for POAs when a GOA is authorized, $0.545 for privately owned motorcycles, $1.29 for privately owned airplanes, and $0.23 for moving purposes), pursuant to the process discussed below. This notice of subject bulletin is the only notification to agencies of revisions to the POV mileage rates for official travel and relocation other than the changes posted on GSA's Web site. GSA determines these rates by reviewing the annual standard automobile study contracted for by the Internal Revenue Service (IRS), as well as conducting independent automobile, motorcycle and aircraft studies that evaluate various factors, such as the cost of fuel, the depreciation of the original vehicles costs, maintenance and insurance, and/or by applying consumer price index data.

**DATES:** *Effective:* December 30, 2014.

*Applicability:* This notice applies to travel performed on or after January 1, 2015 through December 31, 2015.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, please contact Mr. Cy Greenidge, Office of Government-Wide Policy, Office of Asset and Transportation Management, at 202–219–2349, or by email at *travelpolicy@gsa.gov*. Please cite Notice of FTR Bulletin 15–02.

**SUPPLEMENTARY INFORMATION:**

**Change in Standard Procedure**

GSA posts the POV mileage reimbursement rates, formerly published in 41 CFR Chapter 301, solely on the internet at *www.gsa.gov/mileage.* Also, posted on this site is the standard mileage rate for moving purposes. This process, implemented in FTR Amendments 2010–07, 75 FR 72965, November 29, 2010, 2007–03, 72 FR 35187, June 27, 2007, and 2007–06, 72 FR 70234, December 11, 2007, in the **Federal Register** ensures more timely updates in mileage reimbursement rates by GSA for Federal employees who are on official travel or relocating. Notices published periodically in the **Federal Register**, such as this one, and the changes posted on the GSA Web site, now constitute the only notification to Federal agencies of revisions to the POV mileage reimbursement rates and the standard mileage reimbursement rate for moving purposes.

Dated: December 16, 2014.

**Alexander J. Kurien,**

*Deputy Associate Administrator, Office of Asset and Transportation Management, Office of Government-Wide Policy.*

[FR Doc. 2014–30317 Filed 12–29–14; 8:45 am]

**BILLING CODE 6820–14–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10421]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by January 29, 2015.

**ADDRESSES:** When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions:

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 or Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

**FOR FURTHER INFORMATION CONTACT:** Reports Clearance Office at (410) 786–1326.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Fee-for-Service Recovery Audit Prepayment Review Demonstration and Prior Authorization Demonstration; *Use:* On July 23, 2012, the Office of Management and Budget approved the collections required for two demonstrations of prepayment review and prior authorization. The first demonstration allows Medicare Recovery Auditors to review claims on a pre-payment basis in certain States. The second demonstration established a prior authorization program for Power Mobility Device claims in certain States.

For the Recovery Audit Prepayment Review Demonstration, CMS and its agents request additional documentation, including medical records, to support submitted claims. As discussed in more detail in Chapter 3 of the Program Integrity Manual, additional documentation includes any medical documentation, beyond what is included on the face of the claim that supports the item or service that is billed. For Medicare to consider coverage and payment for any item or service, the information submitted by the provider or supplier (*e.g.,* claims) must be supported by the documentation in the patient's medical records. When conducting complex medical review, the contractor specifies documentation they require in accordance with Medicare's rules and policies. In addition, providers and suppliers may supply additional documentation not explicitly listed by the contractor. This supporting information may be requested by CMS and its agents on a routine basis in instances where diagnoses on a claim do not clearly indicate medical necessity, or if there is a suspicion of fraud.

For the Prior Authorization of Power Mobility Devices (PMDs) Demonstration, we are piloting prior authorization for PMDs. Prior authorization will allow the applicable documentation that supports a claim to be submitted before the item is delivered. For prior authorization, relevant documentation for review is submitted before the item is delivered or the service is rendered. CMS will conduct this demonstration in California, Florida, Illinois, Michigan, New York, North Carolina, Texas, Pennsylvania, Ohio, Louisiana, Missouri, Maryland, New Jersey, Indiana, Kentucky, Georgia, Tennessee, Washington, and Arizona based on beneficiary address as reported to the Social Security Administration and recorded in the Common Working File (CWF). For the demonstration, a prior

authorization request can be completed by the (ordering) physician or treating practitioner and submitted to the appropriate DME MAC for an initial decision. The supplier may also submit the request on behalf of the physician or treating practitioner. The physician, treating practitioner or supplier who submits the request on behalf of the physician or treating practitioner, is referred to as the ''submitter.'' Under this demonstration, the submitter will submit to the DME MAC a request for prior authorization and all relevant documentation to support Medicare coverage of the PMD item. *Form Number:* CMS–10421 (OMB control number: 0938–1169); *Frequency:* Occasionally; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 333,750; *Total Annual Responses:* 333,750; *Total Annual Hours:* 170,060. (For policy questions regarding this collection contact Daniel Schwartz at 410–786–4197.)

Dated: December 23, 2014.

**Martique Jones,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2014–30468 Filed 12–29–14; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–3296–FN]**

**RIN 0938–ZB14**

### Medicare Program; Evaluation Criteria and Standards for Beneficiary and Family Centered Care Quality Improvement Organization Contract

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final notice.

**SUMMARY:** This final notice announces the general criteria we will use to evaluate the effectiveness and efficiency of Beneficiary and Family Centered Care (BFCC) Quality Improvement Organizations (QIOs) that entered into contracts with CMS under the 11th Statement of Work (SOW) in May 2014. The activities for the BFCC–QIO SOW began August 1, 2014. (This contract allows for a transition period from the incumbent QIOs to the successor QIOs.) In addition, this notice addresses the public comments received on the July 28, 2014 notice with comment period entitled, ''Evaluation Criteria and Standards for Beneficiary and Family Centered Care Quality Improvement Organization Contracts.''

**DATES:** *Effective Dates:* August 1, 2014 to July 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** Alfreda Staton, (410) 786–4194.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 1153(h)(2) of the Social Security Act (the Act) requires the Secretary of the Department of Health and Human Services (the Secretary) to publish in the **Federal Register** the general criteria and standards that will be used to evaluate the effective and efficient performance of contract obligations by the Quality Improvement Organizations (QIOs) and to provide the opportunity for public comment with respect to these criteria and standards.

## II. Provisions of the Notice With Comment Period

On July 28, 2014, we published a notice with comment period in the **Federal Register** (79 FR 43747 through 43749) entitled, ''Evaluation Criteria and Standards for Beneficiary and Family Centered Care Quality Improvement Organization Contracts,'' announcing the general criteria we would use to evaluate the effectiveness and efficiency of Beneficiary and Family Centered Care (BFCC) Quality Improvement Organizations (QIOs) that entered into contracts with CMS under the 11th Statement of Work (SOW) in May 2014 (HHSM–500–2014–RFP–BFCC–QIO). That notice generally summarized the tasks of the BFCC–QIOs and the criteria to be used for annual performance evaluations during the 5-year term of the contract. BFCC–QIO performance under the 11th SOW contract began on August 1, 2014, after a transition period.

The tasks of the BFCC–QIOs under the BFCC–QIO 11th SOW contract are as follows:

- Quality of care reviews, including beneficiary complaint and general quality of care reviews.
- Beneficiary appeals of denials of hospital admissions discharge and terminations of services decisions commonly referred to as Grijalva, BIPA, and Weichardt appeals.
- Medical necessity reviews.
- Appropriateness of setting reviews.
- Diagnosis Related Group (DRG) reviews.
- Readmission reviews.
- Reviews under Emergency Medical Treatment and Active Labor Act (EMTALA).
- Sanctions.
- Monitoring of Physician Acknowledgement Statements under section 1156(a) of the Act and our regulations at 42 CFR 412.46.

*Evaluation of the Tasks Measures*

The measures of BFCC–QIO performance for the 11th SOW are as follows:

- Quality of Review: Inter-Rater Reliability.
- 4-day Data Entry Compliance.
- Timeliness of Beneficiary Complaints and Other Quality of Care Reviews.
- Timeliness of Discharge/Service Termination Reviews.
- Timeliness of EMTALA and Higher Weighted Diagnosis-Related Group Reviews.
- Complainant Agreement to Complete Survey.
- Beneficiary Experience with Quality of Care Complaints.
- Beneficiary Experience with Appeal Reviews.

*Evaluation Criteria*

The Annual and 54th Month Evaluation Criteria for each of these measures are specifically defined in Attachment J–10, ''Annual and 54th Month Evaluation Criteria Measures Table,'' of the BFCC–QIO SOW; the criteria for evaluating each deliverable are identified in Schedule F of the 11th SOW. Additional detail is provided in the notice posted at: *http://www.gpo.gov/fdsys/pkg/FR-2014-07-28/pdf/2014-17625.pdf.*

## III. Analysis of and Responses to Public Comments on the Notice With Comment Period

Two commenters submitted several comments concerning the general criteria we would use to evaluate the effectiveness and efficiency of BFCC–QIOs that will enter into contracts with CMS under the 11th SOW. One commenter was affiliated with a private healthcare quality improvement entity and the other commenter was with a healthcare quality improvement association. A summary of the comments and our responses are as follows:

*Comment:* Both commenters expressed concern with potential public perception of bias arising from the evaluation criterion that considers of beneficiary experience with the quality of care complaints and appeal reviews as part of the evaluation of the BFCC–QIO's performance of quality-of-care and other statutory and regulatory reviews and appeals. The commenters indicated that consideration of beneficiary experience with the quality of care complaints and appeal reviews as part of the evaluation of the BFCC–

QIO's performance might lead to the erroneous perception by the public that reviews or appeals may be biased either toward the beneficiary (when obtaining beneficiary feedback), or toward providers (when obtaining provider feedback). One commenter encouraged CMS to carefully consider public perception of the evaluation criterion of beneficiary experience with the quality of care complaints and appeal reviews. The other commenter suggested removing customer feedback from the evaluation criteria.

*Response:* We appreciate the concern with maintaining the integrity of public perception of our oversight of the performance of numerous statutory and regulatory review functions to safeguard beneficiaries. The evaluation criteria and standards include safeguards to monitor the quality of the reviews, such as inter-rater reliability, the QIOs' timeliness in completing the reviews and ongoing monitoring of the BFCC–QIO's internal quality control program. The beneficiary satisfaction survey allows CMS to monitor the QIOs' ability to provide superior customer service while incorporating processes that engage beneficiaries and their representatives in ways that are patient and family centered. With appropriate monitoring and safeguards, we benefit from consideration of beneficiaries' experience with the review and appeals process while maintaining consistently high levels of program integrity.

*Comment:* One commenter agreed with the importance of instituting rigorous standards for inter-rater reliability and suggested that CMS consider developing evaluation standards that assess the accuracy as well as reliability of reviews.

*Response:* We agree with the importance of reliable and accurate reviews relating to the execution of the numerous statutory and regulatory review functions to safeguard beneficiaries. The evaluation criteria includes annual (and at the 54th month) assessment of minimum performance criteria for inter-rater reliability. Additionally, we will monitor the quality program in place at each BFCC–QIO to ensure that the work is both reliable and accurate. We agree on the merits of developing more formal evaluation standards and criteria for assessing the validity of work by BFCC–QIO reviewers. We intend to investigate suitable measures for consideration in the future.

*Comment:* Both commenters noted the potential for external factors and perhaps the outcome of the review or appeal itself to influence the beneficiaries' experience and their willingness to participate in the survey process. One commenter stated that there should be careful consideration of these factors in the evaluation standards and criteria; the other commenter recommended not using beneficiary participation in the survey as part of the evaluation.

*Response:* We believe that the BFCC–QIOs must exercise diplomacy, professionalism and compassion in their performance of numerous statutory and regulatory review functions to safeguard beneficiaries. Our monitoring of the internal quality control processes of the BFCC–QIOs and ongoing monitoring activities focuses in part on the professionalism in their interactions with beneficiaries and their representatives. We recognize that external factors may, to some limited extent, have an impact on the beneficiaries' willingness to participate in the survey of their experience with the appeal or review process. However, based on previous experience with these surveys, we are confident that the proficiency of the work by the BFCC–QIO with beneficiaries or their representatives will be the dominant factor that impacts the willingness by beneficiaries or their representatives to participate in the survey.

*Comment:* Both commenters indicated that although the BFCC–QIO is primarily responsible for its performance on the evaluation standards and criteria, external factors outside the control of the BFCC–QIO may also impact performance on measures such as timeliness (of Beneficiary Complaints and Other Quality of Care Reviews, Discharge/Service Termination Reviews, and EMTALA and Higher-Weighted Diagnosis Related Group Reviews). Both commenters suggested that we consider, if appropriate, factors outside the control of the contractors.

*Response:* We agree with the commenters that there are certain factors, such as natural calamities, for example, hurricanes or earthquakes, in addition to transitional issues at the beginning and end of the contract cycle that may, despite the best mitigating efforts, have an impact on the BFCC–QIO's ability to conduct work in specific regions. We are confident that these extraordinary circumstances can be addressed using our intervention and evaluation standards and criteria.

*Comment:* One commenter noted the importance of the BFCC–QIO's Internal Quality Control (IQC) Program but recommended that we consider only whether the BFCC–QIO had a process in place and not the quality and competence of the execution of the IQC.

*Response:* We agree with the importance of the BFCC–QIO instituting an IQC Program. However, we believe that it is in the Government's and beneficiaries' best interest to conduct ongoing monitoring to ensure that the IQC is kept current and accurately reflects the competent execution of the BFCC–QIO's performance of numerous statutory and regulatory review functions to safeguard beneficiaries. We plan to use ongoing monitoring of the IQC as a critical element to inform discussions with the BFCC–QIO on their improvement efforts.

## IV. Provisions of the Final Notice

We have analyzed these comments and determined that it is appropriate to finalize without modification the provisions set forth in the July 28, 2014 notice with comment period entitled, ''Evaluation Criteria and Standards for Beneficiary and Family Centered Care Quality Improvement Organization Contracts.'' (79 FR 43747 through 43749).

## V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

## VI. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Dated: November 19, 2014.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2014–30448 Filed 12–29–14; 8:45 am]

BILLING CODE 4120–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–3300–FN]**

**RIN 0938–ZB15**

## Medicare Program; Evaluation Criteria and Standards for Quality Improvement Networks Quality Improvement Program Contracts; Base and Task Orders

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final notice.

**SUMMARY:** This final notice announces the general criteria we will use to evaluate the effectiveness and efficiency of Quality Innovation Network (QIN) Quality Improvement Organizations (QIOs) that entered into contracts with CMS under the 11th Statement of Work (SOW) in July 2014. (The activities for the QIN–QIO SOW began August 1, 2014). In addition, this notice addresses public comments on the August 11, 2014 notice with comment period entitled, ''Evaluation Criteria and Standards for Quality Improvement Networks Quality Improvement Program Contracts [Base and Task Order(s)]''

**DATES:** *Effective Dates:* August 1, 2014 to July 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** Alfreda Staton, (410) 786–4194.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 1153(h)(2) of the Social Security Act (the Act) requires the Secretary of the Department of Health and Human Services (the Secretary) to publish in the **Federal Register** the general criteria and standards that will be used to evaluate the effective and efficient performance of contract obligations by the Quality Improvement Organizations (QIOs), and to provide the opportunity for public comment with respect to these criteria and standards.

## II. Provisions of the Notice With Comment Period

On August 11, 2014, we published a notice with comment period in the **Federal Register** (79 FR 46830 through 46835) entitled, ''Evaluation Criteria and Standards for Quality Improvement Networks Quality Improvement Program Contracts [Base and Task Order(s)]'' to announce the general criteria that we would use to evaluate performance of the Quality Innovation Network (QIN)—QIOs under the QIN–QIO 11th Statement of Work (SOW) contract beginning August 1, 2014. (Solicitation Number: HHSM–500–2014–RFP–QIN–QIO). That notice summarized the tasks of the QIN–QIOs and the criteria to be used for annual performance evaluations during the 5-year term of the contract.

The evaluation of a QIN QIO's performance related to their SOW will be based on evaluation criteria specified for the tasks and subtasks set forth in Section C.5 of the QIN–QIO Base Contract and Attachment J–1(b) of the QIN–QIO Task Order. The general criteria that will be used to evaluate the QIN–QIOs under the QIN–QIO 11th SOW contract beginning August 1, 2014, include performance of the following Tasks:

- Improving Cardiac Health and Reducing Cardiac Healthcare Disparities.
- Reducing Disparities in Diabetes Care.
- Improving Prevention Coordination through Meaningful Use of Health Information Technology (HIT) and Collaborating with Regional Extension Centers (RECs).
- Reducing Healthcare-Associated Infections in Hospitals.
- Reducing Healthcare-Acquired Conditions in Nursing Homes.
- Improving Coordination of Care, Quality Improvement through Value-Based Payment, Quality Reporting, and the Physician Feedback Reporting Program.
- Quality Improvement Initiatives.

The Table at Attachment J.1(b) of the SOW lists performance measures by the following Tasks:

- B.1. Improving Cardiac Health
- B.2. Everyone with Diabetes Counts
- B.3. (Reserved)
- B.4. Meaningful Use of HIT and Collaborating With RECs
- C.1. Reducing Healthcare-Acquired Infections (HAIs) in Hospitals
- C.2. Reducing Healthcare-Acquired Conditions in Nursing Homes
- C.3. Coordination of Care
- D.1. Quality Improvement through Physician Value-Based Modifiers
- E.1. Technical Assistance—Quality Improvement Initiatives (QIIs)

*Evaluation Criteria.* Annual (12, 24, 36, 48th month) and 54th month Evaluation Criteria are defined in Attachment J–1(b) of the QIN–QIO SOW.

Additional details provided in the notice are posted at: *http://www.gpo.gov/fdsys/pkg/FR-2014-08-11/pdf/2014-18901.pdf.*

## III. Analysis of and Responses to Public Comments on the Notice With Comment Period

A commenter affiliated with a private healthcare quality improvement entity submitted several comments concerning the general criteria we would use to evaluate the effectiveness and efficiency of QIN–QIOs that entered into contracts with CMS under the 11th SOW.

A summary of the comments and our responses are as follows:

*Comment:* The commenter expressed appreciation for the opportunity to submit comments on the general evaluation criteria and standards and noted the importance of the three-part aim in the QIN–QIO SOW of better health, better healthcare, and lower costs through improved quality for Medicare enrollees. The commenter suggested that CMS continue its efforts to assess the effectiveness of the QIN–QIOs using measures of: improved patient quality and safety, improved population health, reduction of avoidable costs, engagement of patients, families and consumers in care and population health improvement and improved coordination of care and integrative services.

*Response:* We agree with the commenter that the QIN–QIO contract and the general evaluation criteria and standards focus on strategic initiatives including the three part aim and the projects identified in the QIN–QIO Task Order support our goals of the three broad aims of better healthcare, better health, and lower healthcare costs through improvement for all Medicare beneficiaries. Measures for better healthcare include those for the Aim, Better Healthcare for Communities: Beneficiary-Centered, Reliable, Accessible, and Safe Care and includes measures for Tasks C.1 Reducing Healthcare-Associated Infections in Hospitals,C.2, Reducing Healthcare-Acquired Conditions in Nursing Homes, and C.3, Promote Effective Communication and Coordination of Care. Measures for the better health include those for the Aim, Healthy People, Healthy Communities: Improving the Health Status of Communities and include Tasks B.1, Improving Cardiac Health and Reducing Cardiac Healthcare Disparities, B.2, Reducing Disparities in Diabetes Care: Everyone with Diabetes Counts, and B.4, Improving Prevention Coordination through Meaningful Use of HIT and Collaborating with Regional Extension Centers. Measures for lower healthcare costs include Aim D, Better Care at Lower Cost and Task D.1, Quality Improvement through Value-Based Payment, Quality Reporting, and the Physician Feedback Reporting Program. These efforts will likely have a secondary effect of aiding in the transformation of the healthcare system.

*Comment:* The commenter stated that CMS should provide QIN–QIOs with timely communication after award of the contract regarding operational and implementation issues that may arise over the 5-year period of performance.

*Response:* We agree with the need for timely, systematic documentation of questions and answers to each QIN–QIO regarding all aspects of the SOW, including deliverables and the evaluation measures. We established an electronic system for submitting and documenting responses to contract performance concerns and questions;

this system was made available to each of the QIN–QIOs.

### IV. Comment Outside the Scope of the Notice

A second commenter submitted a comment suggesting that CMS provide beneficiaries with an option to pay annually rather than only monthly for the Part D benefit. This comment is outside the scope of the notice of evaluation standards and criteria for the QIN–QIO SOW therefore, we are not providing a response to that comment.

### V. Provisions of the Final Notice

We have analyzed these comments and determined that it is appropriate to finalize without modification the provisions set forth in the August 11, 2014 notice with comment period entitled, ''Evaluation Criteria and Standards for Quality Improvement Networks Quality Improvement Program Contracts [Base and Task Order(s)].'' (79 FR 46830 through 46835).

### VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

### VII. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Dated: November 19, 2014.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2014–30447 Filed 12–29–14; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

*Title:* Temporary Assistance for Needy Families Two-Parent Study.

*OMB No.:* New Collection.

*Description:* The Administration for Children and Families (ACF) is proposing an information collection activity as part of the Temporary Assistance for Needy Families Two-Parent Study. Through this information collection, ACF seeks to gain an in-depth, systematic understanding of the characteristics of two-parent families participating in or eligible to receive TANF, the variety of services two-parent families receive through TANF, how state policies may help or hinder participation in TANF among two-parent families, and how the beliefs of staff and eligible families help or hinder two-parent families' participation in TANF.

The proposed information collection consists of semi-structured interviews with key State and local staff, community-based organization representatives, and adult members of two-parent TANF or likely eligible families on questions of TANF policies, service delivery, and program context, as well as focus groups with adult members of two-parent TANF or likely eligible families.

*Respondents:* State- and local-level TANF administrators and staff, representatives from community-based organizations, and adults from two-parent families on or likely eligible for TANF.

### Annual Burden Estimates

Information collection will be completed within one year.

| Instrument | Total/annual number of respondents | Number of responses per respondent | Average burden hours per response | Annual burden hours |
|---|---|---|---|---|
| Discussion Guide for use with state TANF directors | 10 | 1 | 1.5 | 15 |
| Discussion Guide for use with local TANF directors | 5 | 1 | 1.5 | 8 |
| Discussion Guide for use with local TANF front-line staff | 15 | 1 | 1 | 15 |
| Discussion Guide for use with community-based organizations | 5 | 1 | 1 | 5 |
| Discussion Guide for use with client focus groups | 112 | 1 | 1.5 | 168 |
| Discussion guide for use with client interviews | 25 | 1 | 1 | 25 |

*Estimated Total Annual Burden Hours:* 236.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded 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. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Karl Koerper,**

*Reports Clearance Officer.*

[FR Doc. 2014–30470 Filed 12–29–14; 8:45 am]

BILLING CODE 4184–73–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–0998]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by January 29, 2015.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0409. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring—21 CFR Part 315—(OMB Control Number 0910–0409)—Extension

FDA is requesting OMB approval of the information collection requirements contained in 21 CFR 315.4, 315.5, and 315.6. These regulations require manufacturers of diagnostic radiopharmaceuticals to submit information that demonstrates the safety and effectiveness of a new diagnostic radiopharmaceutical or of a new indication for use of an approved diagnostic radiopharmaceutical.

In response to the requirements of section 122 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), FDA published a final rule in the **Federal Register** of May 17, 1999 (64 FR 26657), amending its regulations by adding provisions that clarify the Agency's evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis or monitoring of diseases. The regulation describes the kinds of indications of diagnostic radiopharmaceuticals and some of the criteria that the Agency would use to evaluate the safety and effectiveness of a diagnostic radiopharmaceutical under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) (the FD&C Act) and section 351 of the Public Health Service Act (42 U.S.C. 262) (the PHS Act). Information about the safety or effectiveness of a diagnostic radiopharmaceutical enables FDA to properly evaluate the safety and effectiveness profiles of a new diagnostic radiopharmaceutical or a new indication for use of an approved diagnostic radiopharmaceutical.

The rule clarifies existing FDA requirements for approval and evaluation of drug and biological products already in place under the authorities of the FD&C Act and the PHS Act. The information, which is usually submitted as part of a new drug application or biologics license application or as a supplement to an approved application, typically includes, but is not limited to, nonclinical and clinical data on the pharmacology, toxicology, adverse events, radiation safety assessments, and chemistry, manufacturing, and controls. The content and format of an application for approval of a new drug are set forth in § 314.50 (21 CFR 314.50). Under part 315, information required under the FD&C Act and needed by FDA to evaluate the safety and effectiveness of in vivo radiopharmaceuticals still needs to be reported.

Based on the number of submissions (that is, human drug applications and/or new indication supplements for diagnostic radiopharmaceuticals) that FDA receives, the Agency estimates that it will receive approximately two submissions annually from two applicants. The hours per response refers to the estimated number of hours that an applicant would spend preparing the information required by the regulations. Based on FDA's experience, the Agency estimates the time needed to prepare a complete application for a diagnostic radiopharmaceutical to be approximately 10,000 hours, roughly one-fifth of which, or 2,000 hours, is estimated to be spent preparing the portions of the application that would be affected by these regulations. The regulation does not impose any additional reporting burden for safety and effectiveness information on diagnostic radiopharmaceuticals beyond the estimated burden of 2,000 hours because safety and effectiveness information is already required by § 314.50 (collection of information approved under OMB control number 0910–0001). In fact, clarification in these regulations of FDA's standards for evaluation of diagnostic radiopharmaceuticals is intended to streamline overall information collection burdens, particularly for diagnostic radiopharmaceuticals that may have well-established, low-risk safety profiles, by enabling manufacturers to tailor information submissions and avoid unnecessary clinical studies. Table 1 contains estimates of the annual reporting burden for the preparation of the safety and effectiveness sections of an application that are imposed by existing regulations. This estimate does not include the actual time needed to conduct studies and trials or other research from which the reported information is obtained.

In the **Federal Register** of July 21, 2014 (79 FR 42337), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 315.4, 315.5, and 315.6 | 2 | 1 | 2 | 2,000 | 4,000 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 22, 2014.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2014–30452 Filed 12–29–14; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–0797]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance: Medical Device ISO 13485:2003 Voluntary Audit Report Submission Pilot Program

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by January 29, 2015.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0700. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Guidance: Medical Device ISO 13485:2003 Voluntary Audit Report Submission Pilot Program—(OMB Control Number 0910–0700)—Extension**

Under section 228 of the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), as amended by section 704(g)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374(g)(7)), the owner or operator of an establishment may submit an audit report that assesses conformance with appropriate quality system standards set by the International Organization for Standardization (ISO) and identified by the Secretary in public notice.

The ''Guidance for Industry, Third Parties and FDA Staff: Medical Device ISO 13485:2003 Voluntary Audit Report Submission Program'' describes how FDA's Center for Devices and Radiological Health and Center for Biologics Evaluation and Research are implementing this provision of the law and providing public notice as required. The proposed collections of information are necessary to satisfy the previously mentioned statutory requirements for implementing this voluntary submission program. The collected information is used for setting risk-based inspectional priorities.

In the **Federal Register** of June 26, 2014 (79 FR 36318), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours | Total operating and maintenance costs |
|---|---|---|---|---|---|---|
| (One time only burden) First year, electronic setup and verification certificate [1] | 1,700 | 1 | 1,700 | [2] 42 | 71,400 | $51,000 |
| (Recurring burden) Audit report submission | 1,700 | 1 | 1,700 | 3 | 5,100 | 51,000 |

[1] There are no capital costs associated with this information collection.

[2] Respondent may already have a valid WebTrader account established for other FDA electronic submissions.

Based on FDA's experience with the founding regulatory members of the Global Harmonization Task Force (GHTF), FDA expects that the vast majority of manufacturers who will participate in the Voluntary Audit Report Submission Program will be manufacturers who are certified by Health Canada under ISO 13485:2003.

In addition, FDA only expects firms that do not have major deficiencies or observations in their ISO 13485:2003 audits to be willing to submit their audit reports to FDA under the Voluntary Audit Report Submission Program. FDA analyzed its inspection data from Fiscal Year (FY) 2013 (October 1, 2012 to October 1, 2013) and determined that the total number of inspections finalized in FY 2013 for medical devices was 2,404. The breakdown for the 2,404 compliance decisions is as follows:

TABLE 2—COMPLIANCE DECISIONS FY 2013

| Compliance decision | Number | Approximate percentage |
|---|---|---|
| Official Action Indicated | 169 | 7 |
| Voluntary Action Indicated | 902 | 38 |
| No Action Indicated | 1083 | 45 |
| Pending Final Decision | 249 | 10 |

Because FDA only expects firms who do not have major deficiencies or observations to be willing to submit their audit reports to FDA under the Voluntary Audit Report Submission Program, FDA only expects to receive audit reports that would have been classified by FDA as No Action Indicated (NAI).

Assuming that the percentage breakdown of compliance decisions for all inspections conducted in FY 2013 can be extrapolated and applied to audits of manufacturers certified under ISO 13485:2003 by Health Canada, FDA can estimate the number of Canadian establishments that would have had an inspection classified as an NAI. Because 45 percent of all compliance decisions resulted in an NAI decision, FDA estimates that 1,546 of the facilities certified under ISO 13485:2003 by Health Canada (45 percent of the total 3,436 facilities) would have had an inspection classified as an NAI.

Because FDA expects that the vast majority of manufacturers who will participate in the Voluntary Audit Report Submission Program will be manufacturers certified by Health Canada under ISO 13485:2003, FDA expects the number of reports to be submitted from manufacturers certified by regulatory systems established by other founding GHTF members to be minimal. For purposes of calculating the reporting burden, FDA estimates that approximately 10 percent of total audit reports submitted under this program will be from these other manufacturers. Because 90 percent of the audit reports are expected to be submitted by manufacturers certified by Health Canada (approximately 1,500 audit reports), the total number of audit reports FDA expects to receive in a year is approximately 1,700 audit reports.

FDA estimates from past experience with the Electronic Submission Gateway system, WebTrader, that the first year to set up the account and to receive the verification certificate takes approximately 40 hours. This burden may be minimized if the respondent already has an established account in WebTrader for other electronic submissions to FDA, but FDA is assuming that all respondents to this new pilot program will be setting up a WebTrader account for the first time in the first year. For subsequent years, the burden hours are estimated at 1 hour to renew the yearly required verification certification.

FDA further estimates that the gathering, scanning, and submission of the audit reports, certificates, and related correspondence would take approximately 2 hours utilizing the eSubmitter system.

Therefore, the first year will include 40 hours for the WebTrader system plus 2 hours for the eSubmitter submission process, resulting in 42 hours per response for the first year. For subsequent years, it is estimated that only 1 hour will be necessary for the WebTrader system plus the 2 hours for the eSubmitter submission process, resulting in 3 hours per response each year thereafter.

There are operating and maintenance costs associated with this information collection. The costs are $30 per year to establish and maintain the Electronic Submission Gateway verification certificate.

This guidance also refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073, and the collections of information for the Inspection by Accredited Persons Program have been approved under OMB control number 0910–0569.

Dated: December 23, 2014.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2014–30513 Filed 12–29–14; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0672]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reprocessed, single-use device labeling.

**DATES:** Submit either electronic or written comments on the collection of information by March 2, 2015.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of

information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Prominent and Conspicuous Mark of Manufacturers On Single-Use Devices—(OMB Control Number 0910–0577)—Extension**

Section 502 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 352), among other things, establishes requirements that the label or labeling of a medical device must meet so that it is not misbranded and subject to regulatory action. Section 301 of the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250) amended section 502 of the FD&C Act to add section 502(u) to require devices (both new and reprocessed) to bear prominently and conspicuously the name of the manufacturer, a generally recognized abbreviation of such name, or a unique and generally recognized symbol identifying the manufacturer.

Section 2(c) of the Medical Device User Fee Stabilization Act of 2005 (Pub. L. 109–43) amends section 502(u) of the FD&C Act by limiting the provision to reprocessed single-use devices (SUDs) and the manufacturers who reprocess them. Under the amended provision, if the original SUD or an attachment to it prominently and conspicuously bears the name of the manufacturer, then the reprocessor of the SUD is required to identify itself by name, abbreviation, or symbol in a prominent and conspicuous manner on the device or attachment to the device. If the original SUD does not prominently and conspicuously bear the name of the manufacturer, the manufacturer who reprocesses the SUD for reuse may identify itself using a detachable label that is intended to be affixed to the patient record.

The requirements of section 502(u) of the FD&C Act impose a minimal burden on industry. This section of the FD&C Act only requires the manufacturer, packer, or distributor of a device to include their name and address on the labeling of a device. This information is readily available to the establishment and easily supplied. From its registration and premarket submission database, FDA estimates that there are 67 establishments that distribute approximately 427 reprocessed SUDs. Each response is anticipated to take 0.1 hours (6 minutes) resulting in a total burden to industry of 43 hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1] [2]

| Type of respondent | Number of respondents | Number of disclosures per respondent | Total annual disclosures | Average burden per disclosure | Total hours |
|---|---|---|---|---|---|
| Establishments listing less than 10 SUDs. | 58 | 2 | 116 | 0.1 (6 minutes) | 12 |
| Establishments listing 10 or more SUDs. | 9 | 34 | 306 | 0.1 (6 minutes) | 31 |
| Total | | | | | 43 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Numbers have been rounded.

Dated: *December 23, 2014.*

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2014–30511 Filed 12–29–14; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–1027]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Infant Formula Recall Regulations

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Infant Formula Recall Regulations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** On October 27, 2014, the Agency submitted a proposed collection of information entitled ''Infant Formula Recall Regulations'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0188. The approval expires on November 30, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: December 22, 2014.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2014–30461 Filed 12–29–14; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2007–D–0369]**

### Draft and Revised Draft Guidances for Industry Describing Product-Specific Bioequivalence Recommendations; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of additional draft and revised draft product-specific bioequivalence (BE) recommendations. These recommendations provide product-specific guidance on the design of BE studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'', which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site. The BE recommendations identified in this notice were developed using the process described in that guidance.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on these draft and revised draft guidances before it begins work on the final versions of the guidances, submit either electronic or written comments on the draft and revised draft product-specific BE recommendations listed in this notice by March 2, 2015.

**ADDRESSES:** Submit written requests for single copies of the individual BE guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance recommendations.

Submit electronic comments on the draft product-specific BE recommendations to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Kris Andre Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4726, Silver Spring, MD 20993–0002, 240–402–7959.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

As described in that guidance, FDA adopted this process to develop and disseminate product-specific BE recommendations and to provide a meaningful opportunity for the public to consider and comment on those recommendations. Under that process, draft recommendations are posted on FDA's Web site and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received, and either publishes final recommendations or publishes revised draft recommendations for comment. Recommendations were last announced in the **Federal Register** on April 2, 2014 (79 FR 18561). This notice announces draft product-specific recommendations, either new or revised, that are posted on FDA's Web site.

### II. Drug Products for Which New Draft Product-Specific BE Recommendations Are Available

FDA is announcing the availability of a new draft guidance for industry on product-specific BE recommendations for drug products containing the following active ingredients:

TABLE 1—NEW DRAFT PRODUCT-SPECIFIC BE RECOMMENDATIONS FOR DRUG PRODUCTS

| | |
|---|---|
| A ..... | Acetaminophen; Aspirin; Caffeine. |
| | Acetaminophen; Butalbital; Caffeine; Codeine phosphate. |
| | Acyclovir. |
| | Aripiprazole. |
| B ..... | Benzyl alcohol. |
| | Betamethasone valerate. |
| | Bosutinib monohydrate. |
| | Brimonidine tartrate; Brinzolamide. |
| | Buprenorphine hydrochloride; Naloxone hydrochloride. |
| C ..... | Cobicistat; Elvitegravir; Emtricitabine; Tenofovir disoproxil fumarate. |
| | Conjugated estrogens. |
| D ..... | Dapsone. |
| | Darunavir ethanolate. |
| I ..... | Ibuprofen sodium. |
| L ..... | Levothyroxine sodium (multiple reference listed drugs). |
| | Lidocaine; Prilocaine. |
| | Lomitapide mesylate. |
| | Lurasidone hydrochloride. |
| M ..... | Metoprolol tartrate. |
| N ..... | Nepafenac (multiple reference listed drugs). |
| P ..... | Posaconazole. |
| R ..... | Raltegravir potassium. |
| | Regorafenib. |
| S ..... | Selegine hydrochloride. |
| T ..... | Testosterone. |
| | Tofacitinib citrate. |
| | Treprostinil. |
| V ..... | Vandetanib. |

### III. Drug Products for Which Revised Draft Product-Specific BE Recommendations Are Available

FDA is announcing the availability of a revised draft guidance for industry on product-specific BE recommendations for drug products containing the following active ingredients:

TABLE 2—REVISED DRAFT PRODUCT-SPECIFIC BE RECOMMENDATIONS FOR DRUG PRODUCTS

| | |
|---|---|
| A ..... | Adapalene (multiple reference listed drugs and dosage forms). |
| | Adapalene; Benzoyl peroxide. |
| B ..... | Brimonidine tartrate (multiple reference listed drugs). |
| | Brinzolamide. |
| D ..... | Doxorubicin hydrochloride. |
| E ..... | Ethinyl estradiol; Levonorgestrel. |
| H ..... | Hydrocodone bitartrate; Ibuprofen. |
| K ..... | Ketoconazole. |
| M ..... | Memantine hydrochloride (multiple dosage forms). |
| | Methylprednisolone acetate. |
| N ..... | Nebivolol hydrochloride. |
| | Nisoldipine. |
| P ..... | Phenytoin sodium (multiple reference listed drugs). |
| S ..... | Sevelamer carbonate. |

TABLE 2—REVISED DRAFT PRODUCT-SPECIFIC BE RECOMMENDATIONS FOR DRUG PRODUCTS—Continued

| | |
|---|---|
| | Sevelamer hydrochloride. |

For a complete history of previously published **Federal Register** notices related to product-specific BE recommendations, please go to *http://www.regulations.gov* and enter Docket No. FDA–2007–D–0369.

These draft and revised draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These guidances represent the Agency's current thinking on product-specific design of BE studies to support ANDAs. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## IV. Comments

Interested persons may submit either electronic comments on any of the specific BE recommendations posted on FDA's Web site to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. The guidances, notices, and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

## V. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: December 23, 2014.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2014–30514 Filed 12–29–14; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–0001]**

### Advisory Committees; Filing of Closed Meeting Reports

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings during fiscal year 2014.

**ADDRESSES:** Copies are available at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500. You also may access the docket at *http://www.regulations.gov* for the annual reports of those FDA advisory committees that held closed meetings during fiscal year 2014. Insert the docket number found in brackets in the heading of this document at *http://www.regulations.gov* into the ''Search'' box, clear filter under Document Type (left side of screen), and check ''Supporting and Related Material,'' then Sort By Best Match (from the drop-down menu; top right side of screen), ''ID Number (Z–A)'' or Sort By Best Match (from the drop-down menu) ''Title (A–Z),'' also found in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Teresa L. Hays, Committee Management Officer, Advisory Committee and Oversight Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–8220.

**SUPPLEMENTARY INFORMATION:** Under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. app.) and 21 CFR 14.60(d), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period October 1, 2013, through September 30, 2014:

*Center for Biologics Evaluation and Research:*

Blood Products Advisory Committee
Cellular, Tissue, and Gene Therapies Advisory Committee
Vaccines and Related Biological Products Advisory Committee

*National Center for Toxicological Research:*

Science Board to the National Center for Toxicological Research

Annual Reports are available for public inspections between 9 a.m. and 4 p.m., Monday through Friday at the following locations:

(1) The Library of Congress, Madison Bldg., Newspaper and Current Periodical Reading Room, 101 Independence Ave. SE., Rm. 133, Washington, DC; and

(2) The Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: December 22, 2014.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2014–30460 Filed 12–29–14; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–D–2065]**

### Radiation Biodosimetry Devices; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Radiation Biodosimetry Devices.'' This draft guidance provides recommendations to assist industry in designing studies to establish the analytical and clinical performance characteristics of radiation biodosimetry medical countermeasure devices. This draft guidance is not final nor is it in effect at this time.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by March 30, 2015.

**ADDRESSES:** An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Radiation Biodosimetry Devices'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices

and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Dickey, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5262, Silver Spring, MD 20993–0002, 301–796–5028.

**SUPPLEMENTARY INFORMATION:**

## I. Background

This draft guidance provides recommendations to assist industry in designing studies to establish the analytical and clinical performance characteristics of radiation biodosimetry medical countermeasure devices.

Radiation biodosimetry countermeasure devices are devices used for the purpose of reconstructing the ionizing radiation dose received by individuals or populations using physiological, chemical or biological markers of exposure found in humans. Radiation biodosimetry technologies may be used at various stages during triage and treatment after the exposure of a population to ionizing radiation as a result of intentional harm or as an unintended consequence of a disaster. Devices may be designed to give quantitative outputs or qualitative information around a clinical decision making cut-point. Likewise, devices may be designed for use in field triage settings, at patient bedsides, or in Clinical Laboratory Improvement Amendments of 1988 (CLIA) (Pub. L. 100–578) certified clinical laboratories. FDA considered both high-throughput and single-use devices in developing this draft guidance document.

This draft guidance only applies to validation of biodosimetry devices intended to be used to assess exposure in non-therapeutic or accidental scenarios (*e.g.* a deliberate attack, such as use of an improvised nuclear device, or a natural disaster). This draft guidance neither applies to devices that assess deliberate radiation dosing that may occur in the course of medical treatment nor to devices that measure effects from long term exposure. In addition, dosimeters, which are devices that detect radiation exposure on a physical substrate rather than through a biological response and are worn by people who might be exposed to radiation during the course of their normal work (such as film badges), are not addressed in this guidance document. Finally, biological assays that might be used to detect the presence of ingested radioisotopes in sputum or urine are not considered in this draft guidance document.

This draft guidance document does not provide specific study designs; it describes design principles for studies that may be used to establish the safety and effectiveness of radiation biodosimetry devices.

## II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on evaluating the performance characteristics of radiation biodosimetry devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

## III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Radiation Biodosimetry Devices'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1400045 to identify the guidance you are requesting.

## IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 58 have been approved under OMB control number 0910–0119; the collections of information in 21 CFR parts 801 and 809 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231; the collections of information in the guidance document entitled ''Informed Consent For In Vitro Diagnostic Device Studies Using Leftover Human Specimens That Are Not Individually Identifiable'' have been approved under OMB control number 0910–0582; and the collections of information in the guidance document entitled ''Guidance for Industry and FDA Staff: Administrative Procedures for CLIA Categorization'' have been approved under OMB control number 0910–0607.

## V. Comments

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

Dated: December 22, 2014.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2014–30453 Filed 12–29–14; 8:45 am]

**BILLING CODE 4164–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–0001]**

### Science Board to the Food and Drug Administration; 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:* Science Board to the Food and Drug Administration (Science Board).

*General Function of the Committee:* The Science Board provides advice primarily to the Commissioner of Food and Drugs and other appropriate officials on specific complex scientific and technical issues important to the FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice to the Agency on keeping pace with technical and scientific developments including in regulatory science, input into the Agency's research agenda, on upgrading its scientific and research facilities, and training opportunities. It will also provide, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.

*Date and Time:* The meeting will be held on March 4, 2015, from 8:30 a.m. to 4 p.m.

*Location:* FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503 B and C) Silver Spring, MD 20993–0002. For those unable to attend in person, the meeting will also be Webcast. The link for the Webcast is available at *https://collaboration.fda.gov/sb315/.* 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:* Martha Monser, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3309, Silver Spring, MD 20993–0002, 301–796–4627, *martha.monser@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:* The Science Board will be provided with a progress report or a final draft report the Commissioner's Fellowship Program Evaluation subcommittee and will hear a progress report from Science Moving Forward subcommittee. The Science Board will be asked to provide feedback on FDA's public access policy. FDA will seek the Science Board's input regarding approaches to regulatory science training coordination. The Science Board will be provided with a follow up on FDA's activities regarding the re-introduction of bovine heparin and will hear an overview of science-related activities from one of the centers. A recipient of one of the Fiscal Year 2014 Scientific Achievement Awards (selected by the Science Board) will provide an overview of the activities for which the award was given.

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 February 25, 2015. Oral presentations from the public will be scheduled between approximately 1 p.m. and 1:30 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 February 17, 2015. 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 February 18, 2015.

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 Ms. Martha Monser 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: December 23, 2014.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2014–30516 Filed 12–29–14; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–1936]**

### Electronic Cigarettes and the Public Health; Public Workshop

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

**ACTION:** Notice of public workshop.

The Food and Drug Administration (FDA), Center for Tobacco Products, is announcing a public workshop to obtain information on electronic cigarettes and the public health. This will be the second in a series of three workshops. The workshop will include presentations and panel discussions about the current state of the science and will focus on individual health impacts. FDA intends to follow this workshop with an electronic cigarette workshop on population health effects.

**DATES AND TIMES:** The public workshop will be held on March 9, 2015, from 8 a.m. to 5 p.m. and on March 10, 2015, from 8 a.m. to 5 p.m. Individuals who wish to attend the public workshop must register by February 20, 2015.

**LOCATION:** The public workshop will be held at the Marriott Inn and Conference Center, University of Maryland University College, Potomac Ballroom, 3501 University Blvd. East, Hyattsville, MD 20783. The conference center's telephone number is 301–985–7300.

**CONTACT PERSON:** Caryn Cohen, Office of Science, Center for Tobacco Products, Food and Drug Administration, Document Control Center, Bldg. 71, Rm.

G335, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 1–877–287–1373, email: *workshop.CTPOS@fda.hhs.gov*.

*Registration to Attend the Workshop:* If you wish to attend the workshop in person or by Webcast, you must register by submitting an electronic or written request no later than February 20, 2015. Please submit electronic requests at *https://www.surveymonkey.com/s/CTP-March-Workshop*. Persons without Internet access may send written requests for registration to Caryn Cohen (see *Contact Person*). Requests for registration must include the prospective attendee's name, title, affiliation, address, email address if available, and telephone number. Registration is free and you may register to attend in person or view the live Webcast. Seating and viewership are limited, so early registration is recommended. FDA may limit the number of registrants from a single organization and the total number of participants if registration reaches full capacity. For registrants with Internet access, confirmation of registration will be emailed to you no later than February 23, 2015. Onsite registration may be allowed if space is available. If registration reaches maximum capacity, FDA will post a notice closing registration at *http://www.fda.gov/TobaccoProducts/NewsEvents/ucm238308.htm*. If you need special accommodations due to a disability, please contact Caryn Cohen (see *Contact Person*) no later than March 2, 2015.

*Presenters and Panelists:* FDA is interested in gathering scientific information from individuals with a broad range of backgrounds on the scientific topics to be discussed at the workshop. To be considered as a presenter, please provide the following:

- A brief abstract for each presentation. The abstract should identify the specific topic(s) to be addressed and the amount of time requested.
- A one page biosketch that describes and supports the speaker's scientific expertise on the specific topic(s) being presented, nature of the individual's experience and research in the scientific field, positions held, and any program development activities.

Panelists will discuss their scientific knowledge on the questions and presentations in each session. To be considered to serve as a panelist, please provide the following:

- A one page biosketch that describes and supports the speaker's scientific expertise on the specific topic(s) being presented, nature of the individual's experience and research in the scientific field, positions held, and any program development activities.

If you are interested in serving as a presenter or panelist, please submit the requested information, along with the topic on which you would like to speak, to *workshop.CTPOS@fda.hhs.gov* by January 22, 2015.

*Oral Presentations by Members of the Public:* This workshop includes a public comment session. Persons wishing to present during the public comment session must make this request at the time of registration and should identify the topic they wish to address from among those topics under consideration that are identified in section II. FDA will do its best to accommodate requests to present. FDA urges individuals and organizations with common interests to consolidate or coordinate their comments, and request a single time for a joint presentation. For those requesters with Internet access, Caryn Cohen (see *Contact Person*) will email you regarding your request to speak during the public comment period by February 23, 2015.

*Transcripts:* A transcript of the proceedings will be available after the workshop at *http://www.fda.gov/TobaccoProducts/NewsEvents/ucm238308.htm* as soon as the official transcript is finalized. It will also be posted to the docket at *http://www.regulations.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing a public workshop to gather scientific information and stimulate discussion among scientists about electronic cigarettes (e-cigarettes). The focus of this workshop will be the impact of e-cigarettes on individual health, including user exposure, topography, abuse liability, dependence, and short and long-term health effects. A workshop focusing on product science, product packaging, constituent labeling, and environmental impact was held in December 2014. FDA intends to follow this workshop with an additional workshop that will address the impact of e-cigarettes on the population, including discussions of product appeal (*e.g.,* impact of advertising, marketing, flavorings, consumer perceptions) and product safety labeling.

On April 25, 2014, FDA published a proposed rule to extend its tobacco product authorities to additional products that meet the statutory definition of ''tobacco product'' ''Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act (FD&C Act), as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products'' (79 FR 23141, April 25, 2014, Docket No. FDA–2014–N–0189) (proposed deeming rule). If the proposed deeming rule is finalized as proposed, e-cigarettes that are tobacco products would be subject to FDA regulation under the FD&C Act. As stated in the proposed deeming rule, FDA ''is aware of the recent significant increase in the prevalence in e-cigarette use'' (79 FR 23141 at 23152), and there is much to be learned about these relatively new entrants to the market.

These workshops are intended to better inform FDA about these products. Should the Agency move forward as proposed to regulate e-cigarettes, additional information about the products would assist the Agency in carrying out its responsibilities under the law. This would be true regardless of the details of any such final rule. Accordingly, FDA is working to obtain such information now rather than waiting for the conclusion of the deeming rulemaking.

Participants should note that this workshop is not intended to inform the Agency's deeming rulemaking. All comments regarding the proposed deeming rule were to be submitted to the Agency by August 8, 2014 (Docket No. FDA–2014–N–0189). As such, the scope of this workshop is limited to the topics presented in Section II.

At the start of the first workshop in this series, FDA announced via a **Federal Register** notice the opening of a docket for submission of written comments regarding all three workshops (see Establishment of a Public Docket; Electronic Cigarettes and the Public Health Workshop, Docket No. FDA–2014–N–1936, *http://www.gpo.gov/fdsys/pkg/FR-2014-12-02/pdf/2014-28261.pdf*). Regardless of attendance at the public workshops, interested persons are invited to submit comments to the docket. Comments submitted to the docket will not be added to other dockets, such as the docket for the proposed rule deeming additional tobacco products subject to the FD&C Act.

## II. Topics for Discussion

The public workshop will include presentations and panel discussion regarding e-cigarettes and the public health, specifically relating to the impact of e-cigarettes on individual health. Topics to be addressed include, for example: (1) Topography; (2) exposures and toxicological considerations; (3) pharmacokinetics

and pharmacodynamics of nicotine exposure in users; (4) abuse liability and dependence; (5) short and long-term health effects in users; (6) considerations for high risk or vulnerable populations; and (7) human factors. Additional information related to workshop presentations and discussion topics, including specific questions to be addressed at the workshop, can be found at *http://www.fda.gov/TobaccoProducts/NewsEvents/ucm238308.htm*.

Dated: December 22, 2014.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2014–30450 Filed 12–29–14; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; 60-Day Comment Request; Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service (PHS) Funding Is Sought 42 CFR Part 50 Subpart F and Responsible Prospective Contractors 45 CFR Part 94 (OD)

**SUMMARY:** 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 Office of the Director (OD), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*To submit comments and for further information:* To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Kathy Hancock, Assistant Grants Compliance Officer, Division of Grants Compliance and Oversight, Office of Policy for Extramural Research Administration (OPERA), 6705 Rockledge Drive, Room 3523, Bethesda, MD 20892, or call non-toll-free number (301) 435–1962, or Email your request, including your address to: *FCOICompliance@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

**DATES:** *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

*Proposed Collection:* Title: Responsibility of Applicants for Promoting Objectivity in Research for which Public Health Service (PHS) Funding is Sought 42 CFR part 50 Subpart F and Responsible Prospective Contractors 45 CFR part 94 OMB# 0925–0417, Expiration Date: 02/2015, EXTENSION, National Institutes of Health (NIH), Office of the Director (OD).

*Need and Use of Information Collection:* This is a request for OMB Approval for an extension of the information collection and recordkeeping requirements contained in the final rule 42 CFR part 50, subpart F and 45 CFR part 94. The purpose of these regulations is to promote objectivity in research by requiring institutions to establish standards that provide a reasonable expectation that the design, conduct, and reporting of research funded under PHS grants, cooperative agreements and contracts will be free from bias resulting from Investigator financial conflicts of interest.

OMB approval is requested for an extension of 3 years. There are operating costs and/or maintenance costs per response. The total estimated annualized burden hours are 676,130.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent based on applicable section of regulation | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total annual burden hour |
|---|---|---|---|---|
| **Reporting** | | | | |
| Initial Reports under 42 CFR 50.605(b)(1) and (b)(3) or 45 CFR 94.5(b)(1) and (b)(3) from Awardee Institutions | 950 | 1 | 2 | 1,900 |
| Subsequent Reports under 42 CFR 50.605(a)(3)(iii) and (b)(2) or 45 CFR 94.5(a)(iii) and (b)(2) from Awardee Institutions | 50 | 1 | 2 | 100 |
| Mitigation Reports under 45 CFR 94.5(a)(3)(iii) and (b)(2) from Awardee Institutions | 5 | 1 | 2 | 10 |
| Annual Report under 42 CFR 50.605(b)(4) or 45 CFR 94.5(b)(4) from Awardee Institution | 950 | 1 | 1 | 950 |
| Subsequent Reports under 42 CFR 60.606(a) or 45 CFR 94.6(a) from Awardee Institution | 20 | 1 | 10 | 200 |
| **Record Keeping** | | | | |
| Under 42 CFR 50.604(i) or 45 CFR 94.4(i) from Awardee Institutions | 2,000 | 1 | 4 | 8,000 |
| **Disclosure** | | | | |
| Under 42 CFR 50.604(a) or 45 CFR 94.4(a) for Investigators | 3,000 | 1 | 81 | 243,000 |
| Under 42 CFR 50.604(b) or 45 CFR 94.4(b) for Investigators | 38,000 | 1 | 30/60 | 19,000 |
| Under 42 CFR 50.604(b) or 45 CFR 94.4(b) for Institutions | 2,000 | 1 | 6 | 12,000 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Type of respondent based on applicable section of regulation | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total annual burden hour |
|---|---|---|---|---|
| Under 42 CFR 50.604(c)(1) or 45 CFR 94(c)(1) from Sub-recipients | 500 | 1 | 1 | 500 |
| Under 42 CFR 50.604(d) or 45 CFR 94.4(d) Institutions | 3,000 | 1 | 1 | 3,000 |
| Under 42 CFR 50.604(e)(1) or 45 CFR 94.4(e)(1) for Investigators | 38,000 | 1 | 4 | 152,000 |
| Under 42 CFR 50.604(e)(2) or 45 CFR 94.4(e)(2) for Investigators | 38,000 | 1 | 1 | 38,000 |
| Under 42 CFR 50.604(e)(3) or 45 CFR 94.4(e)(3) for Investigators | 950 | 1 | 30/60 | 475 |
| Under 42 CFR 50.604(f) or 45 CFR 94.4(f) for Institutions | 2,000 | 1 | 1 | 2,000 |
| Under 42 CFR 50.605(a)(1) or 45 CFR 94.5(a)(1) for Institutions | 2,000 | 1 | 82 | 164,000 |
| Under 42 CFR 50.605(a)(3) or 45 CFR 94.5(a)(3) for Institutions | 500 | 1 | 3 | 1,500 |
| Under 42 CFR 50.605(a)(3)(i) or 45 CFR 94.5(a)(3)(i) for Institutions | 50 | 1 | 80 | 4,000 |
| Under 42 CFR 50.605(a)(3)(ii) or 45 CFR 94.5(a)(3)(ii) for Institutions | 50 | 1 | 80 | 4,000 |
| Under 42 CFR 50.605(a)(3)(iii) or 45 CFR 94.5(a)(3)(iii) for Institutions | 50 | 1 | 1 | 50 |
| Under 42 CFR 50.605(a)(4) or 45 CFR 94.5(a)(4) for Institutions | 950 | 1 | 12 | 11,400 |
| Under 42 CFR 50.605(a)(5) or 45 CFR 94.5(a)(5) for Institutions | 2,000 | 1 | 5 | 10,000 |
| Under 42 CFR 50.606(c) or 45 CFR 94.6(c) for Institutions | 50 | 1 | 30/60 | 45 |

Dated: December 17, 2014.

**Lawrence Tabak,**

*Deputy Director, Office of the Director, NIH.*

[FR Doc. 2014–30355 Filed 12–29–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; 60-Day Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (NINR)

**SUMMARY:** As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the National Institute of Nursing Research has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection.

*To Submit Comments and for Further Information:* To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Rebecca Hawes, Division of Science Policy and Public Liaison, NINR, NIH, Democracy One, 6701 Democracy Blvd., Suite 710, Bethesda, MD 20892, by phone at (301) 594–0791 or email your request, including your address to: *hawesr@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

*Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

*Proposed Collection:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, 0925–0653, Expiration Date 3/31/2015, EXTENSION, National Institutes of Health (NIH), National Institute of Nursing Research (NINR).

*Need and Use of Information Collection:* There are no changes being requested for this submission. The information collection activity will continue to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. 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 will also allow 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.

NINR will only submit a collection for approval under this generic clearance if it meets the following conditions:

- 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;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- 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;

• Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

• 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.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

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 Office of Management and Budget control number.

OMB approval is requested for an additional 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,025.

**Estimated Annualized Burden Hours**

ESTIMATED ANNUAL REPORTING BURDEN

| Type of collection | Number of respondents | Annual frequency per response | Hours per response | Total hours |
|---|---|---|---|---|
| Focus Groups | 150 | 1 | 90/60 | 225 |
| Individual In-Depth Interviews | 75 | 1 | 1 | 75 |
| Individual Brief Interviews | 200 | 1 | 15/60 | 50 |
| Customer Satisfaction Surveys | 200 | 1 | 15/60 | 50 |
| Small Group Discussions | 100 | 1 | 90/60 | 150 |
| Conferences and Training Pre- and Post-Surveys | 500 | 1 | 30/60 | 250 |
| Website Usability Testing | 100 | 1 | 90/60 | 150 |
| Pilot Testing Surveys | 150 | 1 | 30/60 | 75 |
| Total | 1,475 | ..... | ..... | 1,025 |

Dated: December 17, 2014.

**Rebecca E. Hawes,**

*Project Clearance Liaison, National Institutes of Health, National Institute of Nursing Research.*

[FR Doc. 2014–30599 Filed 12–29–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

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 Mental Health, 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, National Institute of Mental Health.

*Date:* February 3–4, 2015.

*Time:* 9:00 a.m. to 5:15 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Porter Neuroscience Research Center, 35A Convent Drive, Bethesda, MD 20892.

*Contact Person:* Jennifer E. Mehren, Ph.D., Executive Secretary, Division of Intramural Research Programs, National Institute of Mental Health, NIH, 35A Convent Drive, Room GE 412, Bethesda, MD 20892–3747, 301–496–3501, *mehrenj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: December 22, 2014.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–30367 Filed 12–29–14; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; 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 National Advisory Council on Aging.

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 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 Advisory Council on Aging.

*Date:* January 27–28, 2015.

Closed: January 27, 2015, 3:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building—Building 45, P2 Level, Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Open: January 28, 2015, 8:00 a.m. to 12:30 p.m.

*Agenda:* Call to order and report from the Director; discussion of future meeting dates; consideration of minutes of last meeting; reports from Task Force on Minority Aging Research, NACA Physician Scientist Working Group, Working Group on Program, Division of Aging Biology; Program Highlights.

*Place:* National Institutes of Health, Natcher Building—Building 45, P2 Level, Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Closed: January 28, 2015, 12:30 p.m. to 1:00 p.m.

*Agenda:* To review and evaluate Intramural Research Program.

*Place:* National Institutes of Health, Natcher Building—Building 45, P2 Level, Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

*Contact Person:* Robin Barr, Ph.D., Director, National Institute On Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *barrr@nia.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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nih.gov/nia/naca/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 22, 2014.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–30370 Filed 12–29–14; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Craniofacial Research; 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 National Advisory Dental and Craniofacial Research Council.

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 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 Advisory Dental and Craniofacial Research Council.

*Date:* January 27, 2015.

Open: 8:30 a.m. to 12:00 p.m.

*Agenda:* Report to the Director, NIDCR.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Closed: 1:00 p.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Alicia J. Dombroski, Ph.D., Director, Division of Extramural Activities, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 22, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–30368 Filed 12–29–14; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical 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

National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with a short public comment period at the end. Attendance is limited by the 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 open session will also be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov/*).

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 Advisory General Medical Sciences Council.

*Date:* January 22–23, 2015.

Closed: January 22, 2015, 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

*Open:* January 23, 2015, 8:30 a.m. to ADJOURNMENT.

*Agenda:* For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of the Council.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892

*Contact Person:* Ann A. Hagan, Ph.D., Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC 6200, Bethesda, MD 20892, (301) 594–4499, *hagana@nigms.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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles, will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's home page (*http://www.nigms.nih.gov/About/Council/*) where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 22, 2014.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–30369 Filed 12–29–14; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer 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 the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI Program Project Meeting II (P01).

*Date:* January 28–29, 2015.

*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:* Delia Tang, MD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W602, Bethesda, MD 20892, 240–276–6456, *tangd@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Omnibus R03 & R21 SEP–2.

*Date:* January 29–30, 2015.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Ritz-Carlton, Tysons Corner, 1700 Tysons Blvd., McLean, VA 22102.

*Contact Person:* Eun Ah Cho, Ph.D., Scientific Review Officer and Acting Chief, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W106, Bethesda, MD 20892, 240–276–6342, *choe@mail.nih.gov.*

*Name of Committee:* National Cancer Institute, Special Emphasis Panel; Omnibus SEP–5.

*Date:* January 29, 2015.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 2W032, Rockville, MD 20850, (Telephone Conference Call).

*Contact Person:* Thomas A. Winters, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Dr., Room 7W412, Bethesda, MD 20892, 240–276–6386, *twinters@mail.nih.gov.*

*Name of Committee:* National Cancer Institute, Special Emphasis Panel; NCI SPORE Review III.

*Date:* February 3–4, 2015.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

*Contact Person:* David G. Ransom, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W124, Bethesda, MD 20850, 240–276–6351, *david.ransom@nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Omnibus SEP–9.

*Date:* March 4–5, 2015.

*Time:* 8:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Admiral Fell Inn, 888 Broadway, Baltimore, MD 21231.

*Contact Person:* Robert Bird, Ph.D., Chief, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W110, Bethesda, MD 20892, 240–276–6344, *birdr@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 22, 2014.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–30372 Filed 12–29–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Frederick National Laboratory Advisory Committee.

The meeting will be open to the public, 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.

*Name of Committee:* Frederick National Laboratory Advisory Committee.

*Date:* February 3–4, 2015.

*Time:* 9:00 a.m. to 2:00 p.m.

*Agenda:* Ongoing and New Activities at the Frederick National Laboratory for Cancer Research.

*Place:* National Institutes of Health, 31 Center Drive, Building 31, Wing C; 6th Floor, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Thomas M. Vollberg, Sr., Ph.D., Executive Secretary, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 7W–102, Bethesda, MD 20892, 240–276–6341, *vollbert@mail.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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/fac/fac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 22, 2014.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–30371 Filed 12–29–14; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

**Project: Evaluation for the Partnerships for Success Program—New**

SAMHSA is conducting a cross-site evaluation of the Strategic Prevention Framework (SPF) Partnerships for Success (PFS) program, focusing on the PFS II cohort (first funded in 2012), PFS 2013 cohort (first funded in 2013), and PFS 2014 cohort (first funded in 2014) at both the grantee and community subrecipient levels. Grantees include states, jurisdictions, and tribal entities that subsequently fund community subrecipients to implement substance use prevention interventions. The overall goals of these SPF PFS cohorts is to prevent the onset and reduce the progression of substance abuse, prioritizing underage drinking (UAD) among persons age 12 to 20, prescription drug misuse and abuse (PDM) among persons age 12 to 25, or both; reduce substance abuse-related problems; strengthen prevention capacity and infrastructure at the grantee and community levels; and leverage, redirect, and align statewide funding streams and resources for prevention.

The SPF–PFS cross-site evaluation broadly aims to document and assess the factors that contribute to the effectiveness of the PFS approach to SAMHSA's mission of reducing UAD and PDM, including costs, inputs, outputs, and contextual factors. Targeted evaluation outcomes include both grantee- and community-level substance use intervening variables (*e.g.*, perceived risk of binge drinking), consumption (*e.g.*, past year PDM), and consequences (*e.g.*, alcohol or prescription drug overdoses), especially those related to UAD and PDM.

The SPF–PFS cross-site evaluation will examine infrastructure, with a primary focus on monitoring grantees and community subrecipients to ensure they follow the SPF process, but will place a special emphasis on assessing capacity changes of the community subrecipients who all should be purposefully selected for their high need and low capacity. Another important aspect of the infrastructure evaluation for the SPF–PFS cross-site will be an examination of leveraged partner relationships. In addition, the SPF–PFS cross-site evaluation will collect detailed data about implemented evidence-based interventions, to provide a comprehensive typology of interventions and assess how various types and combinations impact outcomes. The SPF PFS cross-site also will examine economic issues, including associations between funding and outcomes and the cost-effectiveness of various intervention types and combinations.

The SPF–PFS cross site evaluation is expected to have numerous program and policy implications and outcomes at the national, state, and community levels. It will provide valuable information to the prevention field about best practices in real world settings, along with what types of adaptations community implementers make to evidence based interventions to better fit their targeted populations and settings. SPF–PFS cross-site findings will provide guidance to governmental entities and communities as to what types of interventions should be funded and implemented to reduce UAD and PDM. More specifically, this guidance will include information on what combinations or types of interventions work the best. Beyond intervention type and cost, the SPF–PFS cross-site evaluation also will provide a valuable assessment of the importance of leveraged funding as well as providing information about the process states, jurisdictions, tribes, and communities undergo to leverage funding. Information and guidance about leveraging that comes from the SPF–PFS cross site evaluation will allow the federal government, state, tribes, jurisdictions, and local communities to more effectively and efficiently use their resources and sustain future prevention efforts.

Data collection efforts for the evaluation include a *Grantee-Level Instrument—Revised (GLI–R),* a *Community-Level Instrument—Revised (CLI–R),* and a *Project Director (PD)*

*Interview* which will collect key programmatic components hypothesized to be associated with program effectiveness, such as leveraged funding, type of prevention intervention, costs, etc.. The SPF PFS cross-site instruments have been informed by current and previous cross-site evaluation efforts for SAMHSA, drawing heavily from lessons learned through prior and currently OMB-approved SPF SIG evaluations (OMB No. 0930–0279).

The *GLI–R* is a web-based instrument to be completed by the PFS II, 2013, and 2014 grantee project directors (n=52), once at baseline and once in the final grant year. Baseline data for the PFS II and 2013 cohorts will be collected retrospectively. The *GLI–R* will provide categorical, qualitative, and quantitative data related to coordination of State efforts, use of strategic plans, access to data sources, data management, workforce development, cultural competence, sharing of evaluation data, and sustainability.

The *CLI–R* is a web-based instrument designed to be completed by the PFS II, 2013, and 2014 subrecipient community project directors (n=610) to assess subrecipients' progress through the SPF steps, prevention capacity, intervention implementation, and related funding and cost measures. The instrument will provide process data related to leveraging of funding, in-kind services, organizational capacity, collaboration with community partners, data infrastructure, planned intervention targets, intervention implementation (categorization, costs, adaptation, timing, dosage, and reach), cultural competence, evaluation, contextual factors, training and technical assistance needs, and sustainability. The *CLI–R* will be collected semiannually; however, not all questions will be answered every time. For instance, subrecipients will respond to items related to organizational capacity only at baseline and final follow-up, whereas they will respond to intervention implementation items every 6 months.

The *PD Interview* is a semi-structured telephone interview with grantee project directors designed to collect more in-depth information on subrecipient selection, criteria for intervention selection, continuation of SPF SIG activities, leveraging of funds, collaboration, evaluation activities, cultural competence policies, processes to impact health disparities, and challenges faced. The *PD Interview* will be collected at the beginning of the grant, in the third year of the grant, and in the final year of the grant. Baseline data for the PFS II and 2013 cohorts will be collected retrospectively and PFS II grantees will only participate in the interview at the beginning of their final year and at the close of their grant.

ANNUALIZE BURDEN HOURS

| Instrument | Number of respondents | Responses per respondent | Total number of responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| GLI–RB | 17 | 1 | 17 | 1 | 17 |
| SLI–R | 517 | 2 | 1,034 | 2.6 | 2,688 |
| Grantee PD Interview | 30 | 1 | 30 | 1.4 | 42 |
| Annualized Total | 564 | | 1,081 | | 2,747 |

Written comments and recommendations concerning the proposed information collection should be sent by January 29, 2015 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov*. Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

**Summer King,**

*Statistician.*

[FR Doc. 2014–30313 Filed 12–29–14; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF STATE

## DEPARTMENT OF HOMELAND SECURITY

**[DHS Docket No. USCIS–2014–0014]**

## Immigration Policy

**AGENCY:** Department of State; Department of Homeland Security.

**ACTION:** Notice of Request for Information.

**SUMMARY:** On November 21, 2014, the President issued a memorandum for the heads of executive departments and agencies on the subject of modernizing and streamlining the U.S. immigrant and nonimmigrant visa system for the 21st century. The Memorandum directs the Secretaries of State and Homeland Security, in consultation with various other Cabinet secretaries and the White House, to make recommendations to streamline and improve the Nation's legal immigration system. Such efforts should focus on reducing Government costs, improving services for applicants, reducing burdens on employers, and combatting waste, fraud, and abuse in the system, while safeguarding the interests of American workers. This notice solicits public input to inform the development of those recommendations.

**DATES:** Responses must be received by January 29, 2015 to be considered.

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

- *Email: USCISFRComment@uscis.dhs.gov.* Include *Visa Modernization* in the subject line of the message.
- *Online:* You may access the **Federal Register** Notice and submit comments via the Federal eRulemaking Portal Web site by visiting *www.regulations.gov.* In the search box either copy and paste, or type in, the e-Docket ID number USCIS–2014–0014. Click on the link titled Open Docket Folder for the appropriate Notice and supporting documents, and click the Comment Now tab to submit a comment;
- *Mail:* Attn: Laura Dawkins, Chief of the Regulatory Coordination Division, USCIS Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

*Instructions:* Response to this RFI is voluntary. Responses exceeding 30 pages will not be considered. Respondents need not reply to all questions listed below; however,

respondents should clearly indicate the number of each question to which they are responding. The Department of Homeland Security and the Department of State request that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

The full text of the November 21 Memorandum is available at: *http://www.whitehouse.gov/the-press-office/2014/11/21/presidential-memorandum-modernizing-and-streamlining-us-immigrant-visa-s.*

The White House Fact Sheet describing the President's Immigration Accountability Executive Actions of November 20 is available at: *http://www.whitehouse.gov/the-press-office/2014/11/20/fact-sheet-immigration-accountability-executive-action.*

Note that the November 21 Presidential Memorandum, and this RFI, are not focused on potential Federal Government actions that were announced as part of the President's Immigration Accountability Executive Actions of November 20. Rather, this RFI seeks recommendations on improving and modernizing the legal immigration system in other ways. Federal agencies responsible for implementing the previously announced executive actions are establishing stakeholder engagement plans separate from this RFI. Do not submit responses detailing recommendations directly related to the actions announced on November 20, as separate processes exist to engage regarding those actions where necessary. For more information, see:

*http://www.dhs.gov/immigration-action*
*http://www.uscis.gov/immigrationaction*
*http://www.dol.gov/dol/fact-sheet/immigration/perm.htm.*

**FOR FURTHER INFORMATION CONTACT:** Laura Dawkins, Chief of the Regulatory Coordination Division, USCIS Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2140; Telephone number 202–272–8377.

**SUPPLEMENTARY INFORMATION:** On November 21, 2014, President Obama issued a Presidential Memorandum directing the Secretaries of State and Homeland Security to lead an interagency effort, in consultation with private and nonfederal public stakeholders, to develop within 120 days recommendations on streamlining and reforming the Nation's legal immigration system, while safeguarding the interests of American workers, including recommendations to:

(i) Streamline and improve the legal immigration system—including immigrant and nonimmigrant visa processing—with a focus on reforms that reduce Government costs, improve services for applicants, reduce burdens on employers, and combat waste, fraud, and abuse in the system;

(ii) ensure that administrative policies, practices, and systems use all of the immigrant visa numbers that Congress provides for and intends to be issued, consistent with demand; and

(iii) modernize the information technology infrastructure underlying the visa processing system, with a goal of reducing redundant systems, improving the experience of applicants, and enabling better public and congressional oversight of the system.

The Memorandum further directs the Secretaries of State and Homeland Security to establish metrics for measuring progress in implementing these recommendations and in achieving service-level improvements, taking into account the Federal Government's responsibility to protect the integrity of U.S. borders and promote economic opportunity for all workers.

Along with general comments and suggestions, the Departments of State and Homeland Security are also specifically seeking input on the following questions. To the extent possible and wherever appropriate, responses to this RFI should indicate the question number(s) and include, for each recommended action, (a) clear prioritization of which actions are most important and consequential; (b) estimates of the number of individuals affected, time saved, private and public costs saved, general economic benefit, or other impact metrics as appropriate; (c) legal authorities under existing statutes and case law; and (d) suggested government performance metrics as described above. Concrete recommendations are more useful than general observations. Such proposals need not be limited to the activities of the Department of State and the Department of Homeland Security, as the Memorandum also contemplates roles for the Departments of Agriculture, Commerce, Justice, Labor, and Education, and other departments and agencies as relevant. Note that responses should not include the modernization of the PERM labor certification program, as the Department of Labor has provided for a separate process to engage stakeholders on modernized recruitment and application requirements in this program, which applies to permanent workers; for more details, see: *http://www.dol.gov/dol/fact-sheet/immigration/perm.htm.*

**I. Streamlining the Legal Immigration System**

1. What are the most important policy and operational changes that would streamline and improve the processing of immigrant visas at U.S. Embassies and Consulates, for both family-sponsored and employment-based immigrant visas?

2. What are the most important policy and operational changes that would streamline and improve the processing of nonimmigrant visas at U.S. Embassies and Consulates, including visitor, student, temporary worker and other nonimmigrant visas?

3. What are the most important policy and operational changes that would streamline and improve U.S. Citizenship and Immigration Services (USCIS) processing of the following types of immigrant and nonimmigrant visa petitions?

a. Family-sponsored immigrant visa petitions
b. Employment-based immigrant visa petitions
c. Nonimmigrant petitions
d. Humanitarian petitions and applications (such as U nonimmigrant status petitions, T nonimmigrant status applications, and VAWA self-petitions)
e. H–1B temporary worker visa petitions, specifically, ways to reduce burdens on employers and workers engaging in the H–1B petition process, consistent with protections for U.S. and temporary foreign workers. (Note that employment authorization for certain H–4 dependent spouses of H–1 B nonimmigrants was a part of the President's November 20 announcement described above, and recommendations regarding that topic should not be submitted here.)

4. What are the most important policy and operational changes that would streamline and improve the process of changing from one nonimmigrant status to another nonimmigrant status?

5. What are the most important policy and operational changes that would streamline and improve the process of applying for adjustment of status to that of a lawful permanent resident while in the United States?

6. What are the most important policy and operational changes that would streamline and improve the inspection of arriving immigrants and nonimmigrants at U.S. ports of entry?

7. What are the most important policy and operational changes that would attract the world's most talented researchers to U.S. universities, national laboratories, and other research institutions? (Do not submit responses directly related to the actions announced on November 20, including the strengthening and extending of the Optional Practical Training program for foreign students. Separate processes exist to engage regarding those actions where necessary; see details above.)

8. What are the most important policy and operational changes that would attract the world's most talented entrepreneurs who want to start and grow their business in the United States? (Do not submit responses directly related to the actions announced on November 20, including the ''national interest waiver'' and ''significant public benefit'' parole pathways for entrepreneurs. Separate processes exist to engage regarding those actions where necessary; see details above.)

9. What are the policy or operational changes that could assist in creating additional immigration opportunities for high-demand professions, such as physicians?

10. Focusing on the EB–5 immigrant investor visa, what policy or operational changes would (a) reduce existing burdens and uncertainties on the part of petitioners, Regional Centers, and other participants in the program; (b) ensure that this program is achieving the greatest impact in terms of U.S. job creation, economic growth, and investment in national priority projects that the capital markets would not otherwise competitively finance; and (c) enhance protections against fraud, abuse, and criminal misuse of the program by petitioners or Regional Centers?

11. How can labor market related requirements for *temporary* workers be best tailored to meaningfully protect both U.S. and temporary foreign workers while achieving operational efficiency for both employers and relevant Federal agencies?

12. How should relevant occupational categories, descriptors, and/or data, such as the Department of Labor's O*NET system (*http://www.onetonline.org*) be refined and updated to better align the prevailing wage determination process for visas with the evolving job market?

13. Focusing on the diversity visa program, what are the most important policy and operational changes that would streamline and improve the diversity visa process, including enhancing protections against fraud?

14. What other policy and operational changes would most effectively combat waste, fraud, and abuse in the legal immigration system?

**II. Ensuring Use of All Immigrant Visa Numbers**

15. What are the most important policy and operational changes, if any, available within the existing statutory framework to ensure that administrative policies, practices, and systems fully and fairly allocate all of the immigrant visa numbers that Congress provides for and intends to be issued each year going forward?

16. What are the most important policy and operational changes, if any, available within the existing statutory framework to ensure that administrative policies, practices, and systems fully and fairly allocate all of the immigrant visa numbers that Congress provided for and intended to be issued, but were not issued in past years?

**III. Modernizing IT Infrastructure**

17. From the perspective of petitioners and applicants, which elements of the current legal immigration system (both immigrant and nonimmigrant systems) are most in need of modernized information technology (IT) solutions, and what changes would result in the most significant improvements to the user experience?

18. Which existing government-collected data and metrics would be most valuable to make available to the public, consistent with privacy protections and national security, in order to improve oversight and understanding of the legal immigration system?

**Karin M. King,**

*Acting Deputy Assistant Secretary for Visa Services, Department of State.*

**Esther Olavarria,**

*Senior Counselor to the Secretary, Department of Homeland Security.*

[FR Doc. 2014–30641 Filed 12–29–14; 8:45 am]

BILLING CODE P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2014–0030; OMB No. 1660–0020]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request, Write Your Own (WYO) Program.

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

**DATES:** Comments must be submitted on or before January 29, 2015.

**ADDRESSES:** Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Room 7NE, Washington, DC 20472–3100, facsimile number (202) 212–4701, or email address *FEMA-Information-Collections-Management@dhs.gov.*

**SUPPLEMENTARY INFORMATION:** *Changes Since Publication of the 60 Day* ***Federal Register*** *Notice for the Federal Emergency Management Agency Write Your Own (WYO) Program.* The number of respondents and the estimated burden hours have increased since FEMA published the 60 day **Federal Register** Notice on October 15, 2014. *See* 79 FR 61886. This is due to a clerical error. The respondent burden increased from 88 to 90. The estimated responses increased from 1056 to 1080. The estimated time per response

changed from 59 to 0.59. The total burden hours decreased from 62304 to 637.20.

**Collection of Information**

*Title:* Write Your Own (WYO) Program.

*Type of information collection:* Extension without change, of a currently approved information collection.

*Form Titles and Numbers:* FEMA Form 129–1, Write Your Own Program.

*Abstract:* FEMA enters into arrangements with individual private sector insurance companies that are licensed to engage in the business of property insurance. These companies may offer flood insurance coverage to eligible property owners utilizing their customary business practices. WYO Companies are expected to meet the recording and reporting requirements of the WYO Transaction Record Reporting and Processing Plan.

*Affected Public:* Business or other for profit.

*Estimated Number of Respondents:* 90.

*Estimated Total Annual Burden Hours:* 1080.

*Estimated Total Annual Burden Hours:* 637.20.

*Estimated Cost:* There are no annual start-up or capital costs.

Dated: December 17, 2014.

**Charlene D. Myrthil,**

*Director, Records Management Division, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2014–30549 Filed 12–29–14; 8:45 am]

BILLING CODE 9111–52–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1460]**

### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: December 11, 2014.

**Roy E. Wright,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Effective date of modification | Community No. |
|---|---|---|---|---|---|---|
| Alabama | | | | | | |
| Baldwin | City of Gulf Shores (14–04–6192P). | The Honorable Robert Craft, Mayor, City of Gulf Shores, P.O. Box 299, Gulf Shores, AL 36547. | Community Development Department, 1905 West 1st Street, Gulf Shores, AL 36547. | *http://www.msc.fema.gov/lomc* | Feb. 23, 2015 | 015005 |
| Colbert | City of Muscle Shoals (14–04–8204P). | The Honorable David Bradford, Mayor, City of Muscle Shoals, P.O. Box 2624, Muscle Shoals, AL 35662. | City Hall, 2010 East Avalon Avenue, Muscle Shoals, AL 35661. | *http://www.msc.fema.gov/lomc* | Feb. 2, 2015 | 010047 |
| Madison | Unincorporated areas of Madison County (14–04–7485P). | The Honorable Dale W. Strong, Chairman, Madison County Board of Commissioners, 100 Northside Square, Huntsville, AL 35801. | Madison County Public Works Department, 266–C Shields Road, Huntsville, AL 35811. | *http://www.msc.fema.gov/lomc* | Feb. 19, 2015 | 010151 |
| Arizona: | | | | | | |
| Maricopa | City of El Mirage (14–09–2966P). | The Honorable Lana Mook, Mayor, City of El Mirage, 12145 Northwest Grand Avenue, El Mirage, AZ 85335. | City Hall, 14405 North Palm Street, El Mirage, AZ 85335. | *http://www.msc.fema.gov/lomc* | Feb. 27, 2015 | 040041 |
| Maricopa | Unincorporated areas of Maricopa County (14–09–2966P). | The Honorable Denny Barney, Chairman, Maricopa County Board of Commissioners, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003. | Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009. | *http://www.msc.fema.gov/lomc* | Feb. 27, 2015 | 040037 |
| Maricopa | Unincorporated areas of Maricopa County (14–09–2190P). | The Honorable Denny Barney, Chairman, Maricopa County Board of Commissioners, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003. | Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009. | *http://www.msc.fema.gov/lomc* | Feb. 27, 2015 | 040037 |
| California: | | | | | | |
| Los Angeles | Unincorporated areas of Los Angeles County (14–09–4094P). | The Honorable Don Knabe, Chairman, Los Angeles County Board of Supervisors, 500 West Temple Street, Los Angeles, CA 90012. | Los Angeles County Department of Public Works, 900 South Fremont Avenue, Alhambra, CA 91803. | *http://www.msc.fema.gov/lomc* | Mar. 2, 2015 | 065043 |
| Santa Clara | City of Morgan Hill (14–09–3877P). | The Honorable Steve Tate, Mayor, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. | Public Works Department, Engineering Division, 17575 Peak Avenue, Morgan Hill, CA 95037. | *http://www.msc.fema.gov/lomc* | Mar. 2, 2015 | 060346 |
| Florida: | | | | | | |
| Bay | Unincorporated areas of Bay County (14–04–8612P). | The Honorable Guy M. Tunnell, Chairman, Bay County Board of Commissioners, 808 West 11th Street, Panama City, FL 32401. | Bay County Planning and Zoning Department, 808 West 11th Street, Panama City, FL 32401. | *http://www.msc.fema.gov/lomc* | Mar. 9, 2015 | 120004 |
| Duval | City of Jacksonville (14–04–6432P). | The Honorable Alvin Brown, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202. | Development Services Department, 214 Hogan Street North, Suite 2100, Jacksonville, FL 32202. | *http://www.msc.fema.gov/lomc* | Mar. 2, 2015 | 120077 |
| Monroe | City of Key West (14–04–7227P). | The Honorable Craig Cates, Mayor, City of Key West, 3126 Flagler Avenue, Key West, FL 33040. | Planning Department, 3140 Flagler Avenue, Key West, FL 33040. | *http://www.msc.fema.gov/lomc* | Feb. 26, 2015 | 120168 |
| Orange | City of Orlando (14–04–5319P). | The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32802. | Permitting Services Division, 400 South Orange Avenue, Orlando, FL 32801. | *http://www.msc.fema.gov/lomc* | Mar. 6, 2015 | 120186 |
| Orange | Unincorporated areas of Orange County (14–04–5319P). | The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801. | Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, FL 32839. | *http://www.msc.fema.gov/lomc* | Mar. 6, 2015 | 120179 |
| Orange | Unincorporated areas of Orange County (14–04–4367P). | The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801. | Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, FL 32839. | *http://www.msc.fema.gov/lomc* | Mar. 6, 2015 | 120179 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Effective date of modification | Community No. |
|---|---|---|---|---|---|---|
| Georgia: | | | | | | |
| Columbia | City of Grovetown (14–04–4634P). | The Honorable George W. James, III, Mayor, City of Grovetown, 103 Old Wrightsboro Road, Grovetown, GA 30813. | Water Department, 103 Old Wrightsboro Road, Grovetown, GA 30813. | *http://www.msc.fema.gov/lomc* | Mar. 2, 2015 | 130265 |
| Columbia | Unincorporated areas of Columbia County (14–04–4634P). | The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809. | Columbia County Planning Services Division, 603 Ronald Reagan Drive, Building B, 1st Floor, Evans, GA 30809. | *http://www.msc.fema.gov/lomc* | Mar. 2, 2015 | 130059 |
| Hawaii: Maui | Maui County (14–09–2279P). | The Honorable Alan M. Arakawa, Mayor, Maui County, 200 South High Street, 9th Floor, Wailuku, HI 96793. | Maui County Planning Department, 250 South High Street, 2nd Floor, Wailuku, HI 96793. | *http://www.msc.fema.gov/lomc* | Mar. 2, 2015 | 150003 |
| Mississippi: | | | | | | |
| Lafayette | City of Oxford (14–04–4705P). | The Honorable George Patterson, Mayor, City of Oxford, 107 Courthouse Square, Oxford, MS 38655. | City Hall, 107 Courthouse Square, Oxford, MS 38655. | *http://www.msc.fema.gov/lomc* | Mar. 2, 2015 | 280094 |
| Lafayette | Unincorporated areas of Lafayette County (14–04–4705P). | The Honorable Jeff Busby, President, Lafayette County Board of Supervisors, 300 North Lamar Boulevard, Oxford, MS 38655. | Lafayette County Emergency Management Department, 300 North Lamar Boulevard, Oxford, MS 38655. | *http://www.msc.fema.gov/lomc* | Mar. 2, 2015 | 280093 |
| Nevada: | | | | | | |
| Clark | City of Boulder City (14–09–1535P). | The Honorable Roger Tobler, Mayor, City of Boulder City, 401 California Avenue, Boulder City, NV 89005. | Engineering Department, 401 California Avenue, Boulder City, NV 89005. | *http://www.msc.fema.gov/lomc* | Feb. 19, 2015 | 320004 |
| Clark | Unincorporated areas of Clark County (14–09–2584P). | The Honorable Steve Sisolak, Chairman, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89155. | Clark County Public Works Department, 500 Grand Central Parkway, Las Vegas, NV 89155. | *http://www.msc.fema.gov/lomc* | Feb. 19, 2015 | 320003 |
| North Carolina: | | | | | | |
| Brunswick | Town of St. James (13–04–4667P). | The Honorable Rebecca Dus, Mayor, Town of St. James, 4140 A Southport-Supply Road, St. James, NC 28461. | Town Hall, 4140 A Southport-Supply Road, St. James, NC 28461. | *http://www.msc.fema.gov/lomc* | Feb. 27, 2015 | 370530 |
| Brunswick | Unincorporated areas of Brunswick County (13–04–4667P). | The Honorable Phil Norris, Chairman, Brunswick County Board of Commissioners, P.O. Box 249, Bolivia, NC 28422. | Brunswick County Building Inspections Department, Building I, 75 Courthouse Drive, Northeast, Bolivia, NC 28422. | *http://www.msc.fema.gov/lomc* | Feb. 27, 2015 | 370295 |
| Mecklenburg | City of Charlotte (14–04–8637P). | The Honorable Daniel Clodfelter, Mayor, City of Charlotte, 600 East 4th Street, Charlotte, NC 28202. | Mecklenburg County Storm Water Services Division, 700 North Tryon Street, Charlotte, NC 28202. | *http://www.msc.fema.gov/lomc* | Feb. 19, 2015 | 370159 |
| Utah: Washington | Town of Springdale (14–08–0976P). | The Honorable Stan Smith, Mayor, Town of Springdale, 118 Lion Boulevard, Springdale, UT 84767. | Planning and Zoning Department, 118 Lion Boulevard, Springdale, UT 84767. | *http://www.msc.fema.gov/lomc* | Feb. 26, 2015 | 490179 |

[FR Doc. 2014–30532 Filed 12–29–14; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0007]**

### Agency Information Collection Activities: Alien's Change of Address, Form AR–11; Revision of a Currently Approved Collection

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on October 28, 2014, at 79 FR 64208, allowing for a 60-day public comment period. USCIS did not receive any comment in connection with the 60-day notice.

**DATES:** The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 29, 2015. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0007.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** 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, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

**SUPPLEMENTARY INFORMATION:**

### Comments

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

### Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Alien's Change of Address.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* AR–11; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form is used by aliens, including those subject to Special Registration requirements, to submit their change of address to USCIS within 10 days from the date of change.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

- AR–11 (mail) is 360,000 and the estimated hour burden per response is .20 hours.
- AR–11 (electronic) is 1,200,000 and the estimated hour burden per response is .10 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 192,000 hours.

Dated: December 22, 2014.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2014–30505 Filed 12–29–14; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0029]**

### Agency Information Collection Activities: Application for Waiver of Grounds of Inadmissibility, Form I–601; Revision of a Currently Approved Collection

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on August 4, 2014, at 79 FR 45212, allowing for a 60-day public comment period. USCIS did receive two comments in connection with the 60-day notice.

**DATES:** The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 29, 2015. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number [1615–0029].

You may wish to consider limiting the amount of personal information that you

provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** 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, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

**SUPPLEMENTARY INFORMATION:**

## Comments

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

## Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–881; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The information collected on this form is used by U.S. Citizenship and Immigration Services (USCIS) to determine whether the applicant is eligible for a waiver of excludability under section 212 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,625 responses (paper-format) at 1.75 hours per response; 100 responses (biometrics) at 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 36,211 burden hours.

Dated: December 22, 2014.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2014–30508 Filed 12–29–14; 8:45 am]

BILLING CODE 9111–97–P

# DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–HQ–ES–2014–N257; FXHC1122 0900000–145–FF09E33000]**

## Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Land-Based Wind Energy Guidelines

**AGENCY:** Fish and Wildlife Service, Interior.

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

**SUMMARY:** We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on December 31, 2014. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

**DATES:** You must submit comments on or before January 29, 2015.

**ADDRESSES:** Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail), or *hope_grey@fws.gov* (email). Please include ''1018–0148'' in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

**SUPPLEMENTARY INFORMATION:**

## Information Collection Request

*OMB Control Number:* 1018–0148.

*Title:* Land-Based Wind Energy Guidelines.

*Service Form Number:* None.

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

*Description of Respondents:* Developers and operators of wind energy facilities.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* On occasion.

| Activity (reporting and recordkeeping) | Number of respondents | Number of responses | Completion time per response (hours) | Total annual burden hours | Nonhour burden cost per response | Total annual nonhour burden cost |
|---|---|---|---|---|---|---|
| Tier 1 (Desktop Analysis) | 40 | 40 | 81 | 3,240 | $825 | $33,000 |
| Tier 2 (Site Characterization) | 35 | 35 | 369 | 12,915 | 3,750 | 131,250 |
| Tier 3 (Pre-construction studies) | 30 | 30 | 14,695 | 440,850 | 149,288 | 4,478,640 |
| Tier 4 (Post-construction fatality monitoring and habitat studies) | 45 | 45 | 4,023 | 181,035 | 40,875 | 1,839,375 |
| Tier 5 (Other post-construction studies) | 10 | 10 | 6,939 | 69,390 | 70,500 | 705,000 |

| Activity (reporting and recordkeeping) | Number of respondents | Number of responses | Completion time per response (hours) | Total annual burden hours | Nonhour burden cost per response | Total annual nonhour burden cost |
|---|---|---|---|---|---|---|
| Totals | 160 | 160 | | 707,430 | | 7,187,265 |

*Estimated Annual Nonhour Burden Cost:* $7,187,265. Costs will depend on the size and complexity of issues associated with each project. These expenses may include, but are not limited to: Travel expenses for site visits, studies conducted, and meetings with the Service and other Federal and State agencies; training in survey methodologies; data management; special transportation, such as all-terrain vehicle or helicopter; equipment needed for acoustic, telemetry, or radar monitoring, and carcass storage. The Tier 3 estimate is very high because it includes every type of pre-construction monitoring study that could potentially be conducted. It is more likely that a selection of these studies will be performed at any given site, depending on the species of concern identified and other site-specific conditions.

*Abstract:* As wind energy production increased, both developers and wildlife agencies recognized the need for a system to evaluate and address the potential negative impacts of wind energy projects on species of concern. We issued voluntary Land-Based Wind Energy Guidelines (*http://www.fws.gov/windenergy*) in March 2012 to provide a structured, scientific process for addressing wildlife conservation concerns at all stages of land-based wind energy development. The Guidelines also promote effective communication among wind energy developers and Federal, State, tribal, and local conservation agencies. When used in concert with appropriate regulatory tools, the Guidelines are the best practical approach for conserving species of concern. We are asking OMB to renew approval for the information collection requirements in the Guidelines. We are not making any changes to the requirements.

The Guidelines discuss various risks to species of concern from wind energy projects, including collisions with wind turbines and associated infrastructure; loss and degradation of habitat from turbines and infrastructure; fragmentation of large habitat blocks into smaller segments that may not support sensitive species; displacement and behavioral changes; and indirect effects, such as increased predator populations or introduction of invasive plants. The Guidelines assist developers in identifying species of concern that may potentially be affected by proposed projects, including, but not limited to:

- Migratory birds;
- Bats;
- Bald and golden eagles and other birds of prey;
- Prairie chickens and sage grouse; and
- Listed, proposed, or candidate endangered and threatened species.

The Guidelines follow a tiered approach. The wind energy developer begins at Tier 1 or Tier 2, which entails gathering existing data to help identify any potential risks to wildlife and their habitats at proposed wind energy project sites. The developer then proceeds through subsequent tiers, as appropriate, to collect information in increasing detail until the level of risk is adequately ascertained and a decision on whether or not to develop the site can be made. Many projects may not proceed beyond Tier 1 or 2, when developers become aware of potential barriers, including high risks to wildlife. Developers would only have an interest in adhering to the Guidelines for those projects that proceed beyond Tier 1 or 2.

At each tier, wind energy developers and operators should retain documentation to provide to the Service. Such documentation may include copies of correspondence with the Service, results of pre- and post-construction studies conducted at project sites, bird and bat conservation strategies, or any other record that supports a developer's adherence to the Guidelines. The extent of the documentation will depend on the conditions of the site being developed. Sites with greater risk of impacts to wildlife and habitats will likely involve more extensive communication with the Service and longer durations of pre- and post-construction studies than sites with little risk.

Distributed or community-scale wind energy projects are unlikely to have significant adverse impacts to wildlife and their habitats. The Guidelines recommend that developers of these small-scale projects do the desktop analysis described in Tier 1 or Tier 2 using publicly available information to determine whether they should communicate with the Service. Since such project designs usually include a single turbine associated with existing development, conducting a Tier 1 or Tier 2 analysis for distributed or community-scale wind energy projects should incur limited nonhour burden costs. For such projects, if there is no potential risk identified, a developer will have no need to communicate with the Service regarding the project or to conduct studies described in Tiers 3, 4, and 5.

Adherence to the Guidelines is voluntary. Following the Guidelines does not relieve any individual, company, or agency of the responsibility to comply with applicable laws and regulations. Developers of wind energy projects have a responsibility to comply with all applicable laws and regulations, including the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and the Endangered Species Act.

**Comments Received and Our Responses**

*Comments:* On July 3, 2014, we published in the **Federal Register** (79 FR 38055) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on September 2, 2014. We received comments from the wind energy industry, a State agency, an environmental consulting firm, an environmental nongovernmental organization (NGO), and an independent consultant to the environmental NGO community. The comments are sorted below by relevance to the questions posed in the July 3, 2014, notice, followed by our responses. We invited comments concerning this information collection on:

*Whether or not the collection of information is necessary, including whether or not the information will have practical utility.*

Commenters felt that the collection of information was necessary and that the information has practical utility. We did not receive any comments to the contrary. It was noted that the necessity and utility of information collected are dependent upon whether information has previously been collected in the study area. We agree that existing information should be used, where available. The Guidelines encourage use of credible, publicly available information including published studies, technical reports, databases, and information from agencies, local

conservation organizations, and/or local experts. Another commenter noted that any proposal to conduct a study should define the questions that are expected to be answered, because studies are sometimes proposed without regard for whether the information learned will contribute to useful project evaluation. We agree that information should not be collected for the sake of collecting information. To accomplish this, the Guidelines pose questions within each Tier to help developers and Service staff identify data needs and any necessary surveys or studies.

*The accuracy of our estimate of the burden for this collection of information.*

One commenter noted that the estimate of 50 responses and respondents annually submitting information related to Tier 4 seems low considering that the Guidelines are intended to apply not only to projects initiated after publication of the Guidelines, but also to projects that were already in development and already operating. Another commenter provided a revised estimated burden calculated by members of the wind energy industry community. We used the industry's figures in revising the estimate of the burden, and also agreed with the comment that the number of respondents in Tier 4 should be higher to reflect ongoing fatality studies at existing facilities. In addition, we revised the total number of respondents and responses based on the number of wind energy projects the Service reviewed in fiscal year 2013. These changes are reflected in the table above. We have decreased our estimates for the total number of respondents. Although Tier 4 responses have increased in proportion to the total number of respondents, the number reflected in the table above is less than what we provided in our previous request to OMB.

A third commenter noted that the burden estimates are dependent upon the size of the project, complexity of the issues, and experience and equipment needs of the consultant, as well as previous information available for the site. We agree that the factors listed all affect estimates of project costs.

*Ways to enhance the quality, utility, and clarity of the information to be collected.*

Regarding the quality of the data, several commenters felt that there should be a standardized methodology for collection of pre- and post-construction data. We agree that standardized methodologies are ideal. The Guidelines encourage the use of common methods and metrics. Such standardization allows for comparisons among projects and provides some certainty regarding what will be asked of a developer for specific projects. However, because of the need for flexibility in application, the Guidelines do not make specific recommendations on protocol elements for pre- and post-construction studies. The Service's wind energy Web site and the Guidelines direct developers to tools and resources that have been developed and compiled through collaborative efforts and partnerships between Federal, State, and tribal agencies; wind energy developers; and NGOs interested in wind energy-wildlife interactions.

We received comments on specific survey methodologies and study design considerations, which detailed the manner in which studies should be designed, executed, and evaluated, and provided analysis of the usefulness and efficacy of certain pre- and post-construction survey methods. As noted, the Guidelines do not recommend certain methods over others, and instead point users to methods generally accepted by the wind-wildlife community as scientifically valid with an aim towards greater consistency.

One commenter suggested that in addition to standardized data collection, post-construction fatality monitoring should also be automated using new and emerging technologies, and that these automated systems should be required as conditions of receiving incidental take permits under the Endangered Species Act or Bald and Golden Eagle Protection Act. This suggestion extends beyond the purview of the Guidelines in terms of permitting requirements. In addition, we do not have sufficient information about these systems at this time to evaluate their efficacy. If such technologies become a reality, their use, along with a suite of other existing tools, could potentially improve estimates of strike-related fatalities at wind energy facilities.

Regarding the utility of the data, one commenter questioned whether the use of voluntary guidelines is effective due to a lack of use by public and private entities. The commenter referenced a map that shows that wind energy facilities have been, and continue to be, developed in areas of high risk to migratory birds, contrary to the purpose of the Guidelines to guide development away from areas of highest risk to more suitable areas. We are currently in the process of evaluating the efficacy and use of the Guidelines, and the Service is considering regulatory options. Based on feedback from the wind energy industry, and from Service staff, the Guidelines are often successful in improving communication and lead to development of wind projects that are safer for wildlife, but in other cases are not successful in preventing wind energy facilities from being constructed in areas of high risk to wildlife.

Regarding clarity, several commenters indicated the need for greater transparency in pre- and post-construction monitoring results, study design and protocol, and adaptive management plans. Several reasons were given regarding the need for greater transparency, including facilitating study replication and consistency, allowing public evaluation of the effectiveness of the Guidelines, improved quality of information collected, and the need for greater public oversight generally. It was noted that often these data are treated as proprietary information, or are considered as ''confidential business information'' and are withheld from requests made via the Freedom of Information Act. While we agree that the public availability of data would facilitate greater oversight, improved consistency and comparability in study design and results, and improved landscape-level and cumulative effects analyses, we do not have the authority to require companies to share data that they own. Often, we receive reports that contain an analysis of data collected, and not the raw data itself. The information that is provided to us will continue to be evaluated on a case-by-case basis when it is requested via the Freedom of Information Act. We are developing tools that would allow companies to transmit fatality monitoring data via an online system that would provide anonymity, but still make the data available. We will continue to pursue other means of increasing the transparency of information related to study methodology and fatality data.

*Ways to minimize the burden of the collection of information on respondents.*

One commenter felt that the burden of adhering to the Guidelines is adequately compensated for by the discretion that will be exercised by the Office of Law Enforcement should violations of the Migratory Bird Treaty Act (MBTA) or Bald and Golden Eagle Protection Act (BGEPA) occur. This comment has been noted, although it does not provide suggestions for ways to further minimize the burden of the information collection. We also received a comment suggesting burdens could be minimized through use of ''desktop tools'' or existing publicly available information online in Tiers 1 and 2, and by siting projects in areas with minimal risk to

rare, threatened, and endangered species. We agree with the commenter that use of existing information reduces the burden on respondents. The Guidelines encourage use of credible, publicly available information, including published studies, technical reports, databases, and information from agencies, local conservation organizations, and/or local experts. We also agree that burdens are reduced by siting projects in areas with least risk to wildlife and their habitats, and note that this is exactly what we hope to accomplish by working with developers to implement the Guidelines.

*Other Comments*

Several other comments were provided that were not pertinent to the questions asked in the notice. These comments addressed regulatory tools for migratory bird conservation, BGEPA programmatic permits for incidental take of eagles, suggestions for what types of mitigation methods should be acceptable as compensation for loss of protected species, enforcement actions by the Office of Law Enforcement against wind facilities compared with other energy technologies, splitting environmental study responsibilities among separate consultants, and stakeholder involvement in the development of adaptive management plans. One commenter also noted that the Service did not estimate the burden on the public to access the information collected via Freedom of Information Act requests, administrative appeals, and lawsuits. The Paperwork Reduction Act requires that we analyze the burden placed on those who submit information to us, not on the burden of others attempting to access that information.

**Request for Public Comments**

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: December 23, 2014.

**Tina A. Campbell,**

*Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.*

[FR Doc. 2014–30481 Filed 12–29–14; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–NCTC–2014–N258; FF09X32000–FXGO16610900400–145]**

### Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Application for Training, National Conservation Training Center

**AGENCY:** Fish and Wildlife Service, Interior.

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

**SUMMARY:** We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on December 31, 2014. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

**DATES:** You must submit comments on or before January 29, 2015.

**ADDRESSES:** Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail), or *hope_grey@fws.gov* (email). Please include ''1018–0115'' in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

**SUPPLEMENTARY INFORMATION:**

**Information Collection Request**

*OMB Control Number:* 1018–0115.

*Title:* Application for Training, National Conservation Training Center.

*Service Form Number:* 3–2193.

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

*Description of Respondents:* Individuals, businesses, organizations, and State, local, and tribal governments.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Estimated Annual Number of Respondents:* 500.

*Estimated Total Annual Responses:* 500.

*Estimated Time per Response:* 10 minutes.

*Estimated Total Annual Burden Hours:* 84.

*Abstract:* The U.S. Fish and Wildlife Service National Conservation Training Center (NCTC) in Shepherdstown, West Virginia, provides natural resource and other professional training for Service employees, employees of other Federal agencies, and other affiliations, including State agencies, private individuals, not-for-profit organizations, and university personnel. FWS Form 3–2193 (Training Application) is a quick and easy method for prospective students who are not from the Department of the Interior to request training. We encourage applicants to use FWS Form 3–2193 and to submit their requests electronically. However, we do not require applicants to complete both a training form required by their agency and FWS Form 3–2193. NCTC will accept a training request in any format as long as it identifies the name, address, and phone number of the applicant; sponsoring agency; class name; start date; and all required financial payment information.

NCTC uses data from FWS Form 3–2193 to generate class rosters, class transcripts, and statistics, and as a budgeting tool for projecting training requirements. It is also used to track attendance, mandatory requirements, tuition, and invoicing for all NCTC-sponsored courses both onsite and offsite.

**Comments Received and Our Responses**

*Comments:* On July 3, 2014, we published in the **Federal Register** (79 FR 38055) a notice of our intent to request that OMB renew approval for this information collection. In that

notice, we solicited comments for 60 days, ending on September 2, 2014. We received one comment. The comment was directed to the subject matter, validity, and necessity of the training and not to the information collection requirements. The commenter believes that employees should obtain training prior to employment and that further training is unnecessary. We have not made any changes to the collection in response to this comment.

**Request for Public Comments**

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: December 23, 2014.

**Tina A. Campbell,**

*Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.*

[FR Doc. 2014–30480 Filed 12–29–14; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVW0300.L5110000.GN0000. LVEMF1402860.14X MO 4500073913]**

### Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Hycroft Mine Expansion Phase II, Humboldt and Pershing Counties, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM), Black Rock Field Office in Winnemucca, Nevada, intends to prepare an Environmental Impact Statement (EIS) to analyze the potential impacts of approving an expansion of the Hycroft Mine in Humboldt and Pershing Counties, Nevada. This notice announces the beginning of the scoping process to solicit public comments and identify issues to be considered in the EIS, and serves to initiate consultation, as required, under the National Historic Preservation Act.

**DATES:** This notice initiates the public scoping process for the EIS. Comments may be submitted in writing until January 29, 2015. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/nv/st/en/fo/wfo.html.* In order to be included in the Draft EIS, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

**ADDRESSES:** You may submit comments related to the Hycroft Mine Phase II Expansion Project EIS/land use plan amendment by any of the following methods:

- *Web site: http://www.blm.gov/nv/st/en/fo/wfo.html*
- *Email: wfoweb@blm.gov*
- *Fax:* 775–623–1503
- *Mail:* BLM Winnemucca District, Black Rock Field Office 5100 E. Winnemucca Blvd., Winnemucca, NV 89445

Documents pertinent to this proposal may be examined at the Black Rock Field Office.

**FOR FURTHER INFORMATION CONTACT:** Ken Loda, Project Lead, telephone 775–623–1500; address BLM Winnemucca District, Black Rock Field Office, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445; email *wfoweb@blm.gov.* Contact Mr. Loda to have your name added to our mailing list. 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 applicant, Hycroft Resources and Development, Inc, (HRDI) has proposed an expansion of their operations at the existing Hycroft Mine, which is located approximately 55 miles west of Winnemucca, Nevada, in Humboldt and Pershing Counties. The mine is currently authorized to disturb 6,144 acres (approximately 1,784 acres of private land and 4,360 acres of public land), and the BLM analyzed the impacts of that disturbance in an EIS in 2012, and an Environmental Assessment for the mine plan modification in 2014. The expansion to HRDI's operations presented would include:

- Expanding the Plan boundary to the east;
- Extending mining and processing activities until 2034;
- Increasing the rate of process water pumping until 2034;
- Constructing and operating the Northeast Tailings Storage Facility (TSF) and associated pipeline corridor and haul road;
- Constructing and operating the North Heap Leach Facility (HLF) East expansion and associated solution ponds;
- Constructing a new 65 to 80 mile 345 kV power-line to the mine site;
- Expanding the existing Brimstone pit and mine below the measured groundwater table, between 4,210 to 2,860 feet above mean sea level;
- Conducting active dewatering of the Brimstone pit through installation and operation of dewatering wells;
- Conducting passive dewatering within the expanded pit footprint;
- Expanding the South Waste Rock Facility (WRF);
- Modifying the approved land use in the South Processing Complex area to allow the option of constructing the Southwest WRF in place of the complex if desired;
- Modifying waste backfill plans with respect to the proposed mining plan;
- Expanding haul and secondary roads around the pits, WRFs, HLFs, and TSF;
- Constructing storm water diversion, installing culverts, and other storm water controls;
- Constructing growth media stockpiles; and
- Possible construction of a solar energy installation after closure and reclamation.

Total surface disturbance related directly to the modified plan of operations would be 14,909 acres on public and private lands. Disturbance on public land will increase by 8,796 acres, from 4,360 acres to 13,156 acres. Disturbance on private land would

decrease by 31 acres, from 1,784 acres to 1,753 acres. The BLM's approval of the proposed plan of operations modification would extend the mining and processing until 2034.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues: (a) Potential to create acid rock or heavy metals drainage from mining activities, and ensuring that there is no degradation of waters of the state or unnecessary or undue degradation of public lands; (b) Potential for an acidic pit lake to form after mining activities cease; (c) Potential impacts to Golden Eagle habitat and wildlife habitat; and (d) Potential impacts to cultural sites. The BLM will analyze a combination of proposed environmental measures and possible mitigation to reduce or eliminate any impacts associated with the proposed action.

The BLM will use NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed plan of operations modification will assist the BLM in identifying and evaluating impacts of approving the mine expansion to such resources in the context of both NEPA and section 106 of the NHPA.

The BLM will consult with Native American tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed plan of operations modification that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 40 CFR 1501.7.

**William Mack, Jr.,**

*Black Rock Field Manager.*

[FR Doc. 2014–30517 Filed 12–29–14; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–CONC–16844; PPWOBSADC0, PPMVSCS1Y.Y00000]**

### Notice of Extension of Concession Contracts

**AGENCY:** National Park Service, Interior.

**ACTION:** Public Notice.

**SUMMARY:** The National Park Service hereby gives public notice that it proposes to extend the following expiring concession contracts for a period of up to one (1) year, or until the effective date of a new contract, whichever occurs sooner.

**DATES:** Effective January 1, 2015.

**FOR FURTHER INFORMATION CONTACT:** Jo A. Pendry, Acting Chief, Commercial Services Program, National Park Service, 1201 Eye Street NW., 11th Floor, Washington, DC 20005, Telephone: 202–513–7156.

**SUPPLEMENTARY INFORMATION:** All of the listed concession authorizations will expire by their terms on or before December 31, 2014. Pursuant to 36 CFR 51.23, the National Park Service has determined the proposed short-term extensions are necessary to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. The publication of this notice merely reflects the intent of the National Park Service but does not bind the National Park Service to extend any of the contracts listed below.

| CONCID | Concessioner | Park unit |
|---|---|---|
| ACAD010–04 | National Park Tours and Transport, Inc | Acadia National Park. |
| ACAD011–04 | Oli's Trolley | Acadia National Park. |
| FIIS007–05 | Fire Island Concessions, LLC | Fire Island National Seashore. |
| GATE017–03 | JEN Marine Development, LLC | Gateway National Recreation Area. |
| GATE020–04 | Global Golf Services, Inc | Gateway National Recreation Area. |
| NERO001–05 | Eastern National | Northeast Region, National Park Service. |
| SAHI001–05 | The Theodore Roosevelt Association | Sagamore Hill National Historic Site. |
| BISO005–10 | The View | Big South Fork National River & Recreation Area. |
| BLRI003–04 | Parkway Inn, Inc | Blue Ridge Parkway. |
| CUIS001–04 | Lang Seafood Company, Inc | Cumberland Island National Seashore. |
| GRSM007–08 | Elizabeth Burns Cook | Great Smoky Mountains National Park. |
| HOSP001–04 | Hot Springs Advertising and Promotion Commission | Hot Springs National Park. |
| ISRO006–04 | Royale Air Service, Inc | Isle Royale National Park. |
| MORU001–05 | Xanterra Parks & Resorts, Inc | Mount Rushmore National Memorial. |
| OZAR002–05 | George Eugene and Eleanor Maggard | Ozark National Scenic Riverways. |
| OZAR005–05 | George Eugene and Eleanor Maggard | Ozark National Scenic Riverways. |
| OZAR007–05 | Joe and Darlene Devall | Ozark National Scenic Riverways. |
| OZAR008–05 | George Eugene and Eleanor Maggard | Ozark National Scenic Riverways. |
| OZAR010–05 | River Run Canoe & Tube Rental | Ozark National Scenic Riverways. |
| OZAR013–05 | Yellow Paddle Adventures, LLC | Ozark National Scenic Riverways. |
| OZAR014–05 | C & R Boating Company, Inc | Ozark National Scenic Riverways. |
| OZAR020–05 | Darrel Blackwell | Ozark National Scenic Riverways. |
| OZAR023–05 | The Landing Canoe Rental | Ozark National Scenic Riverways. |
| OZAR024–05 | Tom and Della Bedell | Ozark National Scenic Riverways. |
| OZAR025–05 | The Landing and Rosecliff Lodge | Ozark National Scenic Riverways. |
| OZAR028–05 | Jack and Lois Peters | Ozark National Scenic Riverways. |
| OZAR036–05 | George Eugene and Eleanor Maggard | Ozark National Scenic Riverways. |

| CONCID | Concessioner | Park unit |
|---|---|---|
| OZAR049–05 | The Landing and Rosecliff Lodge | Ozark National Scenic Riverways. |
| OZAR050–05 | John Kladiva | Ozark National Scenic Riverways. |
| CANY001–05 | Adventure Bound, Inc | Canyonlands National Park. |
| CANY002–05 | Sheri Griffith Holding, LLC | Canyonlands National Park. |
| CANY003–05 | NavTec Expeditions, Inc | Canyonlands National Park. |
| CANY004–05 | Outward Bound Wilderness | Canyonlands National Park. |
| CANY005–05 | Colorado River & Trail Expeditions, Inc | Canyonlands National Park. |
| CANY006–05 | O.A.R.S. Canyonlands, Inc | Canyonlands National Park. |
| CANY007–05 | Holiday River Expeditions, Inc | Canyonlands National Park. |
| CANY009–05 | Moki Mac River Expeditions, Inc. | Canyonlands National Park. |
| CANY010–05 | O.A.R.S. Canyonlands, Inc | Canyonlands National Park. |
| CANY011–05 | Western River Expeditions, Inc | Canyonlands National Park. |
| CANY012–05 | Niskanen & Jones, Inc | Canyonlands National Park. |
| CANY014–05 | Niskanen & Jones, Inc | Canyonlands National Park. |
| CANY015–05 | ARAMARK Sports and Entertainment, LLC | Canyonlands National Park. |
| CANY016–05 | Tour West, Inc | Canyonlands National Park. |
| CANY017–05 | Western River Expeditions, Inc | Canyonlands National Park. |
| CANY018–05 | American Wilderness Expeditions, Inc | Canyonlands National Park. |
| CANY019–05 | Niskanen & Jones, Inc | Canyonlands National Park. |
| CANY020–05 | Raft Moab, Inc | Canyonlands National Park. |
| CANY022–04 | OARS Canyonlands, Inc | Canyonlands National Park. |
| CANY024–04 | Niskanen & Jones, Inc | Canyonlands National Park. |
| CANY025–04 | NAVTEC Expeditions, Inc | Canyonlands National Park. |
| DINO001–04 | Adventure Bound, Inc | Dinosaur National Monument. |
| DINO002–04 | American River Touring Association, Inc | Dinosaur National Monument. |
| DINO003–04 | Outward Bound West | Dinosaur National Monument. |
| DINO005–04 | Holiday River Expeditions, Inc | Dinosaur National Monument. |
| DINO006–04 | Don Hatch River Expeditions, Inc. | Dinosaur National Monument. |
| DINO008–04 | Tyler Callantine | Dinosaur National Monument. |
| DINO009–04 | OARS Canyonlands, Inc | Dinosaur National Monument. |
| DINO010–05 | Wilkins Firewood and Beverage | Dinosaur National Monument. |
| DINO011–04 | National Outdoor Leadership School | Dinosaur National Monument. |
| DINO012–04 | Sheri Griffith Expeditions, Inc | Dinosaur National Monument. |
| DINO014–04 | Eagle Outdoor Sports, Inc | Dinosaur National Monument. |
| DINO016–04 | AA, LLC | Dinosaur National Monument. |
| GLCA021–05 | Strata Medical, LLC | Glen Canyon National Recreation Area. |
| GRTE034–05 | Wilderness Ventures | Grand Teton National Park. |
| GRTE038–05 | Teton Valley Ranch Camp Education Foundation, Inc | Grand Teton National Park. |
| GRTE046–04 | Gros Ventre River Ranch | Grand Teton National Park. |
| ROMO003–04 | Andrews, Bicknell, and Crothers, LLC | Rocky Mountain National Park. |
| YELL102–04 | Adventures Outfitting | Yellowstone National Park. |
| YELL103–04 | Triangle X Ranch | Yellowstone National Park. |
| YELL105–04 | Bear Paw Outfitters | Yellowstone National Park. |
| YELL106–04 | Jackson Hole Llamas | Yellowstone National Park. |
| YELL107–04 | Wyoming Backcountry Adventures, Inc | Yellowstone National Park. |
| YELL108–04 | Sunrise Pack Station, LLC | Yellowstone National Park. |
| YELL110–04 | Mountain Sky Guest Ranch, LLC | Yellowstone National Park. |
| YELL113–04 | 7D Ranch, LLC | Yellowstone National Park. |
| YELL115–04 | Gary Fales Outfitting, Inc | Yellowstone National Park. |
| YELL117–04 | Scott Sallee | Yellowstone National Park. |
| YELL118–04 | Yellowstone Mountain Guides, Inc. | Yellowstone National Park. |
| YELL120–04 | Slough Creek Outfitters, Inc | Yellowstone National Park. |
| YELL121–04 | Yellowstone Llamas | Yellowstone National Park. |
| YELL122–04 | Sheep Mesa Outfitters | Yellowstone National Park. |
| YELL123–04 | Castle Creek Outfitters and Guide Service | Yellowstone National Park. |
| YELL124–04 | Jake's Horses, Inc | Yellowstone National Park. |
| YELL125–04 | Big Bear Outfitters | Yellowstone National Park. |
| YELL126–04 | Yellowstone Wilderness Outfitters | Yellowstone National Park. |
| YELL127–04 | Medicine Lake Outfitters | Yellowstone National Park. |
| YELL130–04 | Skyline Guest Ranch & Guide Service, Inc | Yellowstone National Park. |
| YELL131–04 | Hell's A-Roarin' Outfitters, Inc | Yellowstone National Park. |
| YELL132–04 | Nine Quarter Circle Ranch, Inc | Yellowstone National Park. |
| YELL137–04 | Wilderness Pack Trips, Inc | Yellowstone National Park. |
| YELL138–04 | Yellowstone Roughriders, LLC | Yellowstone National Park. |
| YELL139–04 | Hoof Beat Recreational Services | Yellowstone National Park. |
| YELL140–04 | Black Otter, Inc | Yellowstone National Park. |
| YELL141–04 | Lost Fork Ranch | Yellowstone National Park. |
| YELL144–04 | Lone Mountain Ranch, Inc | Yellowstone National Park. |
| YELL145–04 | Dollar, Inc | Yellowstone National Park. |
| YELL146–04 | K Bar Z Guest Ranch and Outfitters, LLC | Yellowstone National Park. |
| YELL147–04 | Yellowstone Outfitters | Yellowstone National Park. |
| YELL148–04 | Kevin V. & Deborah A. Little | Yellowstone National Park. |
| YELL156–04 | Two Ocean Pass Outfitting | Yellowstone National Park. |
| YELL157–04 | Beartooth Plateau Outfitters, Inc. | Yellowstone National Park. |

| CONCID | Concessioner | Park unit |
|---|---|---|
| YELL158–04 | Wilderness Trails, Inc | Yellowstone National Park. |
| YELL159–04 | Colby Gines' Wilderness Adventures, LLC | Yellowstone National Park. |
| YELL162–04 | Grizzly Ranch | Yellowstone National Park. |
| YELL164–04 | TNT Ranch, LLC | Yellowstone National Park. |
| YELL165–04 | Gunsel Horse Adventures | Yellowstone National Park. |
| YELL166–04 | ER Ranch Corporation | Yellowstone National Park. |
| YELL168–04 | Llama Trips in Yellowstone | Yellowstone National Park. |
| YELL170–04 | Rockin' HK Outfitters, Inc | Yellowstone National Park. |
| ZION001–03 | Bryce-Zion Trail Rides, Inc | Zion National Park. |
| YOSE003–08 | Kirstie Dunbar-Kari | Yosemite National Park. |

**SUPPLEMENTARY INFORMATION:** Under the provisions of the concession contract listed below and pending the completion of the public solicittion for a prospectus for a new concession contract, the National Park Service authorizes extension of visitors services until December 31, 2015, under the terms of the current contract as amended. The extension of operations does not affect any rights with respect to selection for award of a new concession contract.

| CONCID | Concessioner | Park unit |
|---|---|---|
| VIIS008–05 | CBI Acquisitions, LLC | Virgin Islands National Park. |
| COLO007–05 | The Association for the Preservation of Virginia Antiquities | Colonial National Historical Park. |

The National Park Service provided notice of its intention to extend the two concession contracts listed below to December 31, 2015, under a **Federal Register** Notice published on August 5, 2014. The National Park Service is correcting the park unit for the following:

| CONCID | Concessioner | Park unit |
|---|---|---|
| LACL002–05 | Alaska's River Wild Lodge, LLC | Lake Clark National Park & Preserve. |
| LACL901–05 | Arno Krumm | Lake Clark National Park & Preserve. |

Dated: December 18, 2014.

**Lena McDowall,**

*Associate Director, Business Services.*

[FR Doc. 2014–30482 Filed 12–29–14; 8:45 am]

**BILLING CODE 4312–53–P**

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–CONC–16845; PPWOBSADC0, PPMVSCS1Y.Y00000]**

## Notice of Continuation of Concession Contracts

**AGENCY:** National Park Service, Interior.

**ACTION:** Public notice.

**SUMMARY:** Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for the periods specified below.

**DATES:** Effective January 1, 2015.

**FOR FURTHER INFORMATION CONTACT:** Jo A. Pendry, Acting Chief, Commercial Services Program, National Park Service, 1201 Eye Street NW., 11th Floor, Washington, DC 20005, Telephone: 202–513–7156.

**SUPPLEMENTARY INFORMATION:** The contracts listed below have been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of the respective concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract. The publication of this notice merely reflects the intent of the National Park Service but does not bind the National Park Service to continue any of the contracts listed below.

| CONCID | Concessioner | Park unit |
|---|---|---|
| NACC001–89 | Golf Course Specialists, Inc. | National Mall and Memorial Parks. |
| NACC003–86 | Guest Services, Inc. | National Mall and Memorial Parks. |
| INDE001–94 | Concepts by Staib, Ltd. | Independence National Historical Park. |
| BLRI001–83 | Southern Highland Handicraft Guild, Inc. | Blue Ridge Parkway. |
| CAHA001–98 | Koru Village Incorporated | Cape Hatteras National Seashore. |
| CAHA004–98 | Oregon Inlet Fishing Center, Inc. | Cape Hatteras National Seashore. |
| VIIS001–90 | CBI Acquisitions, LLC | Virgin Islands National Park. |
| GLCA002–88 | ARAMARK Sports and Entertainment Services, Inc. | Glen Canyon National Recreation Area. |
| GLCA003–69 | ARAMARK Sports and Entertainment Services, Inc. | Glen Canyon National Recreation Area. |
| GRCA003–97 | D.N.C. Parks and Resorts at Grand Canyon, Inc. | Grand Canyon National Park. |
| MEVE001–82 | ARAMARK Mesa Verde Company, Inc. | Mesa Verde National Park. |
| PEFO001–85 | Xanterra Parks & Resorts, Inc. | Petrified Forest National Park. |
| LAKE001–73 | Rex G. Maughan & Ruth G. Maughan | Lake Mead National Recreation Area. |
| LAKE002–82 | Lake Mead R.V. Village, LLC | Lake Mead National Recreation Area. |

| CONCID | Concessioner | Park unit |
|---|---|---|
| LAKE005–97 | Rex G. Maughan & Ruth G. Maughan | Lake Mead National Recreation Area. |
| LAKE006–74 | Las Vegas Boat Harbor, Inc. | Lake Mead National Recreation Area. |
| LAKE007–84 | Seven Resorts, Inc. | Lake Mead National Recreation Area. |
| LAKE009–88 | Temple Bar Marina, LLC | Lake Mead National Recreation Area. |

Dated: December 18, 2014.

**Lena McDowall,**

*Associate Director, Business Services.*

[FR Doc. 2014–30479 Filed 12–29–14; 8:45 am]

BILLING CODE 4312–53–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NRNHL–17281: PPWOCRADI0, PCU00RP14.R50000]**

## National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 29, 2014. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 14, 2015. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 5, 2014.

**Roger Reed,**

*Acting Chief, National Register of Historic Places/National Historic Landmarks Program.*

**ALASKA**

**Anchorage Borough-Census Area**

Government Hill Federal Housing Historic District, W. Harvard, Delaney & Brown Sts., Anchorage, 14001147

**CALIFORNIA**

**Amador County**

Withington, George and Eliza, House, 10 Welch Ln., Ione, 14001148

**Los Angeles County**

Mount Lowe Railway District (Boundary Increase), Address Restricted, Altadena, 14001146

**IOWA**

**Polk County**

Elliott Furniture Company, 424 E. Locust St., Des Moines, 14001149

**MASSACHUSETTS**

**Worcester County**

Upton Center Historic District, Church, Main, Milford, Nelson, N. Main, Plain, Pleasant, School & Warren Sts., Upton, 14001150

**MISSISSIPPI**

**Copiah County**

Wesson Presbyterian Church, (Copiah County MPS), 1022 E. Railroad Ave., Wesson, 14001151

**Harrison County**

Biloxi Downtown Historic District (Boundary Increase), (Biloxi MRA) Roughly bounded by Rue Magnolia, Howard Ave., Main & Water Sts., Biloxi, 14001152

Reynoir Street Historic District, (Biloxi MRA), 200 blk. Reynoir St., Biloxi, 14001153

West Central Historic District (Boundary Decrease and Increase), (Biloxi MRA), Roughly bounded by CSXRR, Hopkins Blvd. & Benachi Ave., Biloxi, 14001154

**Madison County**

Canton Cemetery, S. Adams St., Canton, 14001155

**Marion County**

Columbia Country Club, 28 Golf Course Rd., Columbia, 14001156

**MISSOURI**

**Crawford County**

Dillard Mill Historic District, 142 Dillard Mill Rd., Davisville, 14001157

**Jackson County**

Independence Boulevard Christian Church, 606 Gladstone Blvd., Kansas City, 14001158

**NEW YORK**

**Monroe County**

Miller—Horton—Barben Farm, 983 W. Bloomfield Rd., Mendon, 14001161

**OREGON**

**Lincoln County**

Look—Out on Cape Foulweather, The, 4905 Otter Crest Loop, Otter Rock, 14001159

**Washington County**

McDonald, Malcom, House, 22180 NW., Birch St., Hillsboro, 14001160

**WASHINGTON**

**Spokane County**

Levesque—Majer House, 1708 S. Maple Blvd., Spokane, 14001162

Palmer, Eben and Cynthia, Farmstead, 6616 E. Orchard Rd., Spokane, 14001163

[FR Doc. 2014–30446 Filed 12–29–14; 8:45 am]

BILLING CODE 4312–51–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Ocean Energy Management

**[OMB Control Number 1010–0072]**

## Information Collection: Prospecting for Minerals Other Than Oil, Gas, and Sulphur on the Outer Continental Shelf and Authorizations of Noncommercial Geological and Geophysical Activities; Proposed Collection for OMB Review; Comment Request; MMAA104000

**ACTION:** 60-day notice.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Ocean Energy Management (BOEM) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR part 580, Prospecting for Minerals Other than Oil, Gas, and Sulphur on the Outer Continental Shelf, as well as authorizations of noncommercial geological and geophysical (G&G) activities issued pursuant to Section 11 of the Outer Continental Shelf Lands Act.

**DATES:** Submit written comments by March 2, 2015.

**ADDRESSES:** Please send your comments on this ICR to the BOEM Information Collection Clearance Officer, Bureau of Ocean Energy Management, 381 Elden Street, HM–3127, Herndon, Virginia 20170 (mail) or *boemcmts@gmail.com.*

Please reference ICR 1010–0072 in your comment and include your name and return address.

**FOR FURTHER INFORMATION CONTACT:** Office of Policy, Regulations, and Analysis at *boemcmts@gmail.com* to request a copy of the ICR.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 1010–0072.

*Title:* 30 CFR part 580, Prospecting for Minerals other than Oil, Gas, and Sulphur on the Outer Continental Shelf and Authorizations of Noncommercial Geological and Geophysical (G&G) Activities.

*Form:* BOEM–0134, Requirements for G&G Prospecting, Exploration, or Scientific Research on the OCS Related to Minerals Other than Oil, Gas, and Sulphur.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act (OCSLA), as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Section 1337(k) of the OCS Lands Act authorizes the Secretary ''. . . to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.'' An amendment to the OCS Lands Act (Pub. L. 103–426) authorizes the Secretary to negotiate agreements (in lieu of the previously required competitive bidding process) for the use of OCS sand, gravel, and shell resources for certain specified types of public uses. The specified uses will support construction of governmental projects for beach nourishment, shore protection, and wetlands enhancement, or any such project authorized by the Federal Government.

Section 1340 of the OCSLA states that ''. . . any person authorized by the Secretary may conduct geological and geophysical explorations in the [O]uter Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area.'' Geological and geophysical exploration can only be performed pre-lease under a permit, authorization, or scientific research notice. The section further requires that permits to conduct such activities may only be issued if it is determined that the applicant is qualified; the activities do not result in pollution or create hazardous or unsafe conditions; the activities do not unreasonably interfere with other uses of the area or disturb any site, structure, or object of historical or archaeological significance.

Prospecting for marine minerals includes certain aspects of exploration as defined in the OCSLA at 43 U.S.C. 1331(k). The term ''exploration'' means the process of searching for minerals, including geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals. The OCSLA requires all parties who are prospecting marine minerals for commercial purposes to be authorized. The OCSLA also requires non-Federal parties (such as State agencies and contractors of State agencies) to obtain authorization from the Secretary to conduct noncommercial G&G exploration activities (see 43 U.S.C. 1340(a)(1)).

As a Federal agency, BOEM has a responsibility to comply with the National Environmental Policy Act (NEPA), Endangered Species Act, and Marine Mammal Protection Act, among other environmental laws. This includes a substantive duty not to take any agency action that may affect a protected species, as well as a procedural duty to consult with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, when warranted, before engaging in a discretionary action that may affect a protected species.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and the OMB Circular A–25 authorize Federal agencies to recover the full cost of services that confer special benefits. All G&G permits for commercial prospecting are subject to cost recovery, and BOEM regulations specify service fees for these requests.

The authority to carry out these responsibilities is contained in regulations under 30 CFR 580, as well as OCSLA Section 11 (43 U.S.C. 1340(a)(1)), which is the subject of this information collection renewal. BOEM uses the information to ensure there is no environmental degradation, personal harm, or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned mining activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to determine eligibility for reimbursement from the Government for certain costs. Respondents are required to submit form BOEM–0134 to provide the information necessary to evaluate their qualifications, and upon approval, respondents are issued a permit or authorization.

BOEM uses the information collected to understand the G&G characteristics of marine mineral-bearing physiographic regions of the OCS. The information aids BOEM in obtaining a proper balance among the potentials for environmental damage, the discovery of marine minerals, and associated impacts on affected coastal States.

In this renewal, BOEM is expanding the use of form BOEM–0134 to include applications to conduct noncommercial prospecting (exploration) of marine minerals, such as OCS sand, gravel, and shell resources for public use. BOEM is also updating the form to clarify the types of copies being requested, delete incorrect language, make recommendations for faster processing, update addresses, and reference environmental mitigation requirements. To respond to the types of questions BOEM receives on the form, BOEM is also clarifying wording, providing examples/tables to reduce confusion, and clarifying Regional differences, when necessary, to further assist applicants. BOEM is not asking for more information, just outlining current requirements in more detail. However, to better account for the requirement to submit environmental information sufficient for the environmental review, BOEM is increasing the burden hours from 10 to 88 hours for all OCS Regions. We are also adding the terms ''authorization(s)'' and ''exploration'' throughout the form so that the form also serves as the instrument to authorize entities to carry out noncommercial prospecting (exploration) of marine minerals.

Responses are mandatory or required to obtain or retain a benefit. No questions of a sensitive nature are asked. The BOEM protects information considered proprietary according to 30 CFR 580.70, applicable sections of 30 CFR parts 550 and 552, and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2).

*Frequency:* On occasion, annual, or as specified in permits.

*Estimated Number and Description of Respondents:* There are four to seven permittees/respondents, including those required to only file notices (scientific research).

*Estimated Reporting and Recordkeeping Hour Burden:* We estimate the burden for this information collection to be about 488 hours. The

following table details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN TABLE

| Citation 30 CFR part 580, as applicable | Reporting and recordkeeping requirements | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| | | Non-hour cost burden [1] | | |
| **Subpart B** | | | | |
| 10; 11(a); 12; 13; Permit Form. | Apply for permit or authorization (Form BOEM–0134) to conduct prospecting/exploration or G&G scientific research activities, including prospecting/scientific research plan and environmental assessment or required drilling plan. Provide notifications & additional information as required. | 88 | 2 permits | 176 |
| | | | 2 authorizations | 176 |
| | | | $2,012 permit application fee × 2 permits [2] = $4,024 | |
| 11(b); 12(c) | File notice to conduct scientific research activities related to hard minerals, including notice to BOEM prior to beginning and after concluding activities. Arrange alternative deadline. | 8 | 3 notices | 24 |
| Subtotal | | | 7 Responses | 376 |
| | | | $4,024 Non-Hour Cost Burden | |
| **Subpart C** | | | | |
| 21(a) | Report to BOEM if hydrocarbon/other mineral occurrences or environmental hazards are detected or adverse effects occur. | 1 | 1 report | 1 |
| 22 | Request approval to modify operations, with required information. | 1 | 2 requests | 2 |
| 23(b) | Request reimbursement for expenses for BOEM inspection | 1 | 3 requests | 3 |
| 24 | Submit status and final reports on specified schedule/format | 12 | 4 reports | 48 |
| 28 | Request relinquishment of permit | 1 | 1 relinquishment [3] | 1 |
| 31(b); 73 | Governor(s) of adjacent State(s) submissions to BOEM: Comments on activities involving an environmental assessment; request for proprietary data, information, and samples; and disclosure agreement. | 1 | 3 submissions | 3 |
| 33, 34 | Appeal penalty, order, or decision—burden exempt under 5 CFR 1320.4(a)(2), (c).. | 0 | | |
| Subtotal | | | 14 Responses | 58 |
| **Subpart D** | | | | |
| 40; 41; 50; 51; Permit Form. | Notify BOEM and submit G&G data/information collected under a permit and/or processed by permittees or 3rd parties, including reports, logs or charts, results, analyses, descriptions, etc., as required. | 8 | 3 submissions | 24 |
| 42(b); 52(b) | Advise 3rd party recipient of obligations. Part of licensing agreement between parties; no submission to BOEM. | ½ | 4 notices | 2 |
| 42(c), (d); 52(c), (d) | Notify BOEM of 3rd party transactions | 1 | 1 notice | 1 |
| 60; 61 | Request reimbursement for costs of reproducing data/information & certain processing costs. | 1 | 1 request [3] | 1 |
| 70 | Enter disclosure agreement | 4 | 1 agreement | 4 |
| 72(b) | Submit in not less than 5 days comments on BOEM's intent to disclose data/information. | 4 | 1 response | 4 |
| 72(d) | Contractor submits written commitment not to sell, trade, license, or disclose data/information. | 4 | 2 submissions | 8 |
| Subtotal | | | 13 Responses | 44 |
| **General** | | | | |
| Part 580 | General departure and alternative compliance requests not specifically covered elsewhere in Part 580 regulations. | 4 | 1 request | 4 |
| Permits [4] | Request extension of permit/authorization time period | 1 | 2 extensions | 2 |

BURDEN TABLE—Continued

| Citation 30 CFR part 580, as applicable | Reporting and recordkeeping requirements | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| | | Non-hour cost burden [1] | | |
| Permits [4] | Retain G&G data/information for 10 years and make available to BOEM upon request. | 1 | 4 respondents | 4 |
| Subtotal | | | 7 Responses | 10 |
| Total Burden | | | 41 Responses | 488 |
| | | | $4,024 Non-Hour Cost Burdens | |

[1] Fees are subject to modification per inflation annually.
[2] Only permits, not authorizations, are subject to cost recovery.
[3] No requests received for many years. Minimal burden for regulatory (PRA) purposes only.
[4] These permits/authorizations are prepared by BOEM and sent to respondents; therefore, the forms themselves do not incur burden hours.

*Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden:* We have identified one non-hour cost burden for this collection. Under § 580.12(a), there is an application fee of $2,012 when respondents submit a permit application (refer to the table above). Respondents conducting scientific research are required only to file a notice with BOEM and are not subject to the cost recovery fee.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our burden estimates;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden on respondents.

If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup costs or annual operation, maintenance, and purchase of service costs. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (a) Before October 1, 1995; (b) to comply with requirements not associated with the information collection; (c) for reasons other than to provide information or keep records for the Government; or (d) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

*Public Availability of Comments:* Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 19, 2014.

**Deanna Meyer-Pietruszka,**

*Chief, Office of Policy, Regulations, and Analysis.*

[FR Doc. 2014–30559 Filed 12–29–14; 8:45 am]

BILLING CODE 4310–MR–P

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Network Devices, Related Software and Components Thereof (II), DN 3046;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *EDIS*,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *USITC.*[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *EDIS.*[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Cisco Systems, Inc. on December 19, 2014. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain network devices, related software and components thereof (II). The complaint names as respondents Arista Networks, Inc. of Santa Clara, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3046'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures*[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on *EDIS*.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 19, 2014.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2014–30386 Filed 12–29–14; 8:45 am]

**BILLING CODE 7020–02–P**

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–941]**

## Certain Graphics Processing Chips, Systems on a Chip, and Products Containing the Same; Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 21, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Samsung Electronics Co., Ltd of the Republic of Korea and Samsung Austin Semiconductor, LLC of Austin, Texas. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain graphics processing chips, systems on a chip, and products containing the same by reason of infringement of certain claims of U.S. Patent No. 6,147,385 (''the '385 patent''); U.S. Patent No. 6,173,349 (''the '349 patent''); U.S. Patent No. 7,056,776 (''the '776 patent''); and U.S. Patent No. 7,804,734 (''the '734 patent''). The complaint further alleges that an industry in the United States exists or, alternatively, is in the process of being established as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *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.*

**FOR FURTHER INFORMATION CONTACT:** The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2014).

*Scope of Investigation:* Having considered the complaint, the U.S.

International Trade Commission, on December 22, 2014, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain graphics processing chips, systems on a chip, and products containing the same by reason of infringement of one or more of claims 1–4, 6, and 19–21 of the '385 patent; claim 10 of the '349 patent; claims 1, 2, 4, 19, 20, and 22 of the '776 patent; and claims 1–3, 7–9, 12–15, 17, and 19 of the '734 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Samsung Electronics Co., Ltd., 129, Samsung-ro, Yeongtong-gu, Suwon-si, Gyeonggi-do, Republic of Korea 443–742.

Samsung Austin Semiconductor, LLC, 12100 Samsung Boulevard, Austin, TX 78754.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

NVIDIA Corporation, 701 San Tomas Expressway, Santa Clara, CA 95050.

Biostar Microtech International Corp., 2 Floor, No. l08–2 Min Chuan Road, Hsin Tien District, New Taipei, 231, Taiwan.

Biostar Microtech (U.S.A.) Corp., 18551 Gale Avenue, City of Industry, CA 91748–1338.

Elitegroup Computer Systems Co. Ltd., No. 239, Sec. 2, Ti Ding Blvd., Taipei, Taiwan 11493.

Elitegroup Computer Systems, Inc., 6851 Mowry Avenue, Newark, CA 94560.

EVGA Corp., 2900 Saturn Street, Suite B, Brea, CA 92821.

Fuhu, Inc., 909 North Sepulveda Boulevard, El Segundo, CA 90245.

Jaton Corp., 47677 Lakeview Boulevard, Fremont, CA 94538.

Mad Catz, Inc., 7480 Mission Valley Road, San Diego, CA 92108.

OUYA, Inc., 1316 3rd Street, Santa Monica, CA 90401.

Sparkle Computer Co., Ltd., 5F.–7, No. 79, Section l, Xīntáiwǔ Rd, Sijhih District, New Taipei City 221, Taiwan.

Toradex, lnc., 219 lst Avenue, Seattle, WA 98109.

Wikipad, Inc., 2625 Townsgate Road, Suite 330, Westlake Village, CA 91361.

ZOTAC International (MCO) Ltd, 18–24 Shan Mei Street, Fo Tan, Shatin, New Territories, Hong Kong.

ZOTAC USA, Inc., 5793 McCully Street, Chino, CA 91710.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: December 23, 2014.

By order of the Commission.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2014–30484 Filed 12–29–14; 8:45 am]

**BILLING CODE 7020–02–P**

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## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–942]**

## Certain Wireless Devices, Including Mobile Phones and Tablets III; Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 24, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Pragmatus Mobile, LLC of Alexandria, Virginia. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless devices, including mobile phones and tablets, by reason of infringement of certain claims of U.S. Patent No. 8,466,795 (''the '795 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *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.*

**FOR FURTHER INFORMATION CONTACT:** The Office of the Secretary, Dockets Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2014).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on December 22, 2014, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wireless devices, including mobile phones and tablets, by reason of infringement of one or more of claims 1–25 and 27–33 of the '795 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Pragmatus Mobile, LLC, 601 King Street, Suite 200, Alexandria, VA 22314

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: ASUSTeK Computer, Inc., No. 15, Li-Te Road, Peitou District, Taipei 112, Taiwan

ASUS Computer International, Inc., 800 Corporate Way, Fremont, CA 94539

ASUS Technology Pte. Ltd., 15A Changi Business Park Central 1, #05–01, Eightrium, Singapore, 486035, Singapore

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 23, 2014.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2014–30485 Filed 12–29–14; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Network Devices, Related Software and Components Thereof (I), DN 3045;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *EDIS*,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *USITC.*[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *EDIS.*[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Cisco Systems, Inc. on December 19, 2014. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain network devices, related software and components thereof (I). The complaint names as respondents Arista Networks, Inc. of Santa Clara, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3045'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures*[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on *EDIS*.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 19, 2014.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2014–30385 Filed 12–29–14; 8:45 am]

**BILLING CODE 7020–02–P**

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–908]**

## Certain Soft-Edged Trampolines 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 has issued a Final Initial Determination and Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, specifically a limited exclusion order against certain soft-edged trampolines and components thereof imported by respondent Vuly Trampolines Pty. Ltd. of Brisbane, Australia. 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:** Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3438. 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 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).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on December 18, 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 order are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended 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 exclusion order within a commercially reasonable time; and

(v) explain how the limited exclusion order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on January 13, 2015.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight 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. 337–

TA–908) in a prominent place on the cover page, the first page, or both. (*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 at (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 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 of sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

By order of the Commission.

Issued: December 19, 2014.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2014–30248 Filed 12–29–14; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Community Oriented Policing Services; Public Meetings With Members of the Research Community, Subject-Matter Experts and the Public To Discuss Topics Relating to Policing; Executive Order—Establishment of the President's Task Force on 21st Century Policing

**AGENCY:** Community Oriented Policing Services, Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** On December 18, 2014, President Barack Obama signed an Executive Order titled ''Establishment of the President's Task Force on 21st Century Policing'' establishing the President's Task Force on 21st Century Policing (''Task Force''). The Task Force seeks to identify best practices and make recommendations to the President on how policing practices can promote effective crime reduction while building public trust and examine, among other issues, how to foster strong, collaborative relationships between local law enforcement and the communities they protect. The Task Force will be holding its first public meeting.

The meeting agenda is as follows:

Call to Order
Invited witness testimony
Break
Discussion

**DATES:** The meeting date is: January 13, 2015, 9:00 a.m. to 3:00 p.m., Washington, DC.

**ADDRESSES:** The meeting location is Newseum, 555 Pennsylvania Avenue NW., Washington, DC 20001. The public is invited to submit written comments via U.S. Mail to: President's Task Force on Policing in the 21st Century, Office of Community Oriented Policing Services, U.S. Department of Justice, 145 N Street NE., 11th Floor, Washington, DC 20530.

**FOR FURTHER INFORMATION CONTACT:** Director, Ronald L. Davis, 202–514–4229 or *PolicingTaskForce@usdoj.gov*.

Address all comments concerning this notice to *PolicingTaskForce@usdoj.gov*.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public with limited seating. Time will be allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

#### Electronic Access and Filing Addresses

The Task Force is interested in receiving written comments including proposed recommendations from individuals, groups, advocacy organizations, and professional communities. Additional information on how to provide your comments will be posted to *www.cops.usdoj.gov*.

Additional information (viewing, access, materials, etc.) for the public meeting will be posted at *www.cops.usdoj.gov*.

**Melanca Clark,**

*Chief of Staff.*

[FR Doc. 2014–30456 Filed 12–29–14; 8:45 a.m.]

**BILLING CODE P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### Proposed Exemptions From Certain Prohibited Transaction Restrictions

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D–11770, Teamsters Union Local No. 727 Pension Fund; L–11794, Local 268, Sheet Metal Workers International Association, AFL–CIO; and D–11821, EXCO Resources, Inc. 401(k) Plan.

**DATES:** All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

**ADDRESSES:** Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. ___, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210.

*Warning:* All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that

you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**SUPPLEMENTARY INFORMATION:**

## Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

## Teamsters Union Local No. 727 Pension Fund (the Fund) Located in Chicago, Illinois

[Application No. D–11770]

## Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[2]

*Section I. Covered Transactions*

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) and (D) of ERISA, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (D) of the Code, shall not apply to: (1) The sale (the Sale) by the Fund of three separate 25 percent interests in 1300 Higgins Road LLC (the LLC), a limited liability company of which the Fund is the sole member (each, an LLC Interest, and collectively, the LLC Interests), respectively, to each of Local 700, Teamsters Local Union No. 727 (Local 727), and the Teamsters Joint Council No. 25 (the Joint Council, and together with Local 700 and Local 727, the Unions); and (2) the subsequent Sale of the Fund's remaining 25 percent LLC interest (the Fund's LLC Interest) to the Unions due to exercise by the Fund of a put right to sell the Fund's LLC Interest to the Unions (the Put Right), provided that the conditions in Section II are satisfied.

*Section II. Conditions for Relief*

(a) The Fund receives from each of the Unions, as consideration for the Sale of the LLC Interests, a cash amount equal to 25 percent of the greater of: (1) The original purchase price paid by the Fund, or (2) the fair market value of the O'Hare Corporate Center in Park Ridge, Illinois (the Property), determined on the date of the Sale by an Independent Appraiser;

(b) The Fund, upon exercise of the Put Right, receives from the Unions a one-time aggregate cash amount equal to 25 percent of the greater of: (1) The original purchase price paid by the Fund, or (2) the fair market value of the Property on the date of exercise of the Put Right, as determined by an Independent Appraiser;

(c) The Sale and the exercise of the Put Right are each one-time transactions for cash;

(d) The Independent Fiduciary: (1) Analyzes and approves the terms of the Sale and Put Right; (2) ensures that the terms of the Sale and Put Right and the conditions of the exemption are met; (3) has sole responsibility for the exercise of the Put Right on behalf of the Fund; (4) has sole responsibility and authority for the management and operation of the LLC and the Property; and (5) selects the Independent Appraiser and verifies the methodology used by the Independent Appraiser in determining the fair market value of the Property for all purposes under this proposed exemption;

(e) An Independent Appraiser, who is selected by the Independent Fiduciary, establishes the fair market value of the Property for purposes of the Sale and the Put Right, using a methodology approved by the Independent Fiduciary;

(f) The Fund does not pay any commissions, costs or other expenses in connection with the Sale and Put Right, other than the legal fees of the Fund's counsel, the services of the Independent Fiduciary and the services of the Independent Appraiser;

(g) Since its acquisition of the Property, the Fund's ownership interest in the Property has constituted five percent or less of the Fund's assets, and immediately after the Sale the Fund's ownership interest in the Property will be less than two percent of the Fund's assets;

(h) No member of the LLC shall, directly or indirectly, without the approval of the Independent Fiduciary: (1) Act for or on behalf of the LLC; (2) transact any business in the name of the LLC; or (3) sign documents for or otherwise bind the LLC;

(i) No LLC Interests shall be transferable by the Unions prior to the exercise of the Put Right by the Fund, without the approval of the Independent Fiduciary;

(j) Any trustee of the Fund must recuse himself or herself from any vote regarding the termination or removal of the Independent Fiduciary for the Fund if he or she is an officer (or a relative of an officer as defined in Section III) of any of the Unions;

(k) The terms and conditions of the Sale and the Put Right are at least as favorable to the Fund as those obtainable in an arm's-length transaction with an unrelated third party; and

(l) The Sale or Put Right is not part of an arrangement, agreement, or understanding designed to benefit a party in interest with respect to the Fund.

*Section III. Definitions*

(a) The term ''relative'' is a relative as that term is defined in section 3(15) of ERISA, and also includes a brother, sister, and a spouse of a brother or sister;

(b) The term ''Independent Fiduciary'' means Intercontinental Real Estate Corporation (Intercontinental) or another fiduciary of the Plan who (1) is independent or unrelated to the Unions and their affiliates and has the appropriate training, experience, and facilities to act on behalf of the Plan regarding the covered transactions in accordance with the fiduciary duties and responsibilities prescribed by ERISA (including, if necessary, the responsibility to seek the counsel of knowledgeable advisors to assist in its

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

[2] For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer to the corresponding provisions of section 4975 of the Code as well.

compliance with ERISA), and (2) if relevant, succeeds Intercontinental in its capacity as Fiduciary to the Plans in connection with the transactions described herein. The Independent Fiduciary will not be deemed to be independent of and unrelated to the Unions and their affiliates if: (i) Such Independent Fiduciary directly or indirectly controls, is controlled by or is under common control, with the Unions and their affiliates; (ii) such Independent Fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this proposed exemption other than for acting as independent fiduciary in connection with the transactions described herein, provided that the amount or payment of such compensation is not contingent upon, or in any way affected by, the Independent Fiduciary's ultimate decision; and (iii) the annual gross revenue received by the Independent Fiduciary, during any year of its engagement, from the Unions and their affiliates, exceeds two percent (2%) of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year;

(c) The term ''Independent Appraiser'' means an individual or entity meeting the definition of a ''Qualified Independent Appraiser'' under 29 CFR 2570.31(i) retained to determine, on behalf of the Plans, the fair market value of the Property as of the date of the Sale, and may be the Independent Fiduciary, provided it satisfies the definition of Independent Appraiser herein;

(d) The term ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with, the person;

(2) Any officer, director, employee, relative, or partner of the person; or

(3) Any corporation or partnership of which such person is an officer; and

(e) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

*Effective Dates:* The proposed exemption, if granted, will be effective as of the date that a final notice of granted exemption is published in the **Federal Register**.

**Summary of Facts and Representations** [3]

*Background*

1. The Teamsters Union Local No. 727 Pension Fund (the Fund) is a defined benefit pension plan established under a Declaration of Trust between the International Brotherhood of Teamsters Union Local No. 727 (Local 727) and several contributing employers. The Fund is established and administered pursuant to the provisions of section 302(c)(5) of the Labor Management Relations Act of 1947.

The Fund is managed and administered by a Board of Trustees (the Trustees or the Applicant) that is comprised of four Trustees who are selected by employers who are parties to collective bargaining agreements with Local 727 and four Trustees who are selected by Local 727. The Applicant states that the Fund covers eligible members of Local 727 and certain employees of Local 727, Teamsters Local Union No. 700 (Local 700) and Teamsters Joint Council No. 25 (Joint Council) (collectively, the Unions). As of February 28, 2014, the Applicant notes, the Fund had total assets of approximately $239,677,146 and net assets of $238,141,734.[4]

2. According to the Applicant, on February 26, 2010, the Fund completed its purchase of a building and a parcel of improved real estate located at 1300 Higgins Road in Park Ridge, Illinois (the Property) from Duke Realty, an unaffiliated third party, for a purchase price of $7,405,000.[5] The Applicant represents that the Property comprises approximately two acres and the building contains 95,600 square feet of net rentable area office space known as ''the O'Hare Corporate Center.''

3. The Applicant represents that the purchase of the Property was based on a written recommendation from Intercontinental Real Estate Corporation (Intercontinental), a real estate consulting company based in Boston, Massachusetts. The Applicant states that Intercontinental is an SEC-registered investment adviser with $2.5 billion in assets under management, and that Intercontinental has developed, built, managed and owned $6 billion of commercial real estate. The recommendation was included in an investment management agreement prepared by Intercontinental for the Fund (the Management Agreement), dated February 2, 2010. The Management Agreement included a financial and strategic analysis of the Property and noted that the Property was well-maintained and could accommodate both small and mid-sized tenants, which make up the bulk of the demand in the O'Hare suburban submarket of Chicago where the Property is located. The Management Agreement also included a lease expiration schedule for the Property, a schedule of comparable sales and a schedule of comparable leases.

4. The Applicant states that, in connection with the Fund's purchase of the Property, Intercontinental formed the 1300 Higgins Road LLC (the LLC) to hold the Property after its purchase by the Fund. Accordingly, upon completing its purchase, the Fund transferred ownership of the Property to the LLC and the Fund became the LLC's sole member (an LLC Member).

5. The Applicant represents that Intercontinental has made leasing decisions on behalf of the LLC with respect to the Property since its acquisition. In its Management Agreement, Intercontinental concluded that leasing space to the Unions would, among other things, stabilize the building at the time of economic uncertainty.[6] Accordingly, the Applicant represents that on July 1, 2010, the Fund entered into a second investment management agreement with Intercontinental (the AMA), with respect to the leasing of the property.

6. According to the Applicant, Intercontinental executed leases with respect to the Property (the Leases) with: Local 700, effective May 1, 2010; Joint Council, effective April 1, 2010; and Local 727, effective May 1, 2011.[7] The Applicant represents that Intercontinental has had ongoing responsibilities with respect to the Property since February 2010 including executing the Leases and making subsequent decisions with respect to the Leases on behalf of the LLC.

*Request for Relief*

7. The Applicant represents that the Fund desires to sell a 25 percent interest

[3] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless otherwise indicated.

[4] These amounts were reported on the Form 5500 for the Fund's plan year ending February 28, 2014.

[5] The current value of the Property, as reported in an appraisal performed by US Realty Consultants, Inc. on behalf of the Fund for Intercontinental, is $9,100,000 as of May 30, 2013.

[6] As of February 2, 2010, 76 percent of the net rentable area of the Property was leased.

[7] The Applicant represents that it entered into the Leases with the belief that exemptive relief for such transactions is provided by PTE 76–1, 41 FR 12740, March 25, 1976, as corrected at 41 FR 16620, April 20, 1976, and PTE 77–10, 42 FR 33918, July 1, 1977. The Department is not expressing a view herein whether the Applicant has complied with the conditions of such class exemptions.

in the LLC (an LLC Interest) to each of the Unions for an aggregate amount equal to 75 percent of the LLC in a one-time sale in exchange for cash (the Sale). The Applicant states that, in exchange for the LLC Interests, the Fund will receive an amount from each Union that is equal to 25 percent of the greater of: (1) The original purchase price paid by the Fund, or (2) the fair market value of the Property determined on the date of the Sale by an independent appraiser (Independent Appraiser). As discussed below, following any Sale, the Independent Fiduciary acting on behalf of the Fund will retain full and complete control over the management and operation of the LLC and the Property.

8. The Applicant represents that the Fund wishes to engage in the Sale because the Fund desires to increase the diversity of its investments by reducing its investment in the O'Hare Corporate Center. Furthermore, the Fund believes that the Sale will be in the interest of its participants and beneficiaries because the Unions, as tenants, would be more likely to continue their occupancy if they also owned an interest in the Property (thus increasing the likelihood of the long-term success of the Fund's investment in the Property), and will have a vested interest in preserving the value of the O'Hare Corporate Center.

9. The Applicant represents that Intercontinental will act as the independent fiduciary (Independent Fiduciary) with respect to the Sale and will manage the operation of the LLC on behalf of the Fund, pursuant to the Amended and Restated Operating Agreement for the LLC (the Operating Agreement) following the Sale. The Applicant represents that no member of the LLC will, directly or indirectly, act for or on behalf of the LLC, transact any business in the name of the LLC or sign documents for or otherwise bind the LLC without the approval of the Independent Fiduciary. The Applicant represents that the Operating Agreementprovides that the Independent Fiduciary will have the sole authority to cause or permit the LLC to take certain actions that generally include (but are not limited to) borrowing money or amending the terms and conditions of any financing, granting any security interest affecting the Property, selling any portion of the Property (including any other sale of the Property in connection with the enforcement of the Fund's rights under the Operating Agreement), entering into or amending any contract for the design, construction, management or leasing of the Property, making alterations to the Property, dissolving the LLC, and entering into any merger, consolidation or restructuring of the LLC.

10. The Operating Agreement also provides the Fund with the right to require each of the Unions to purchase the Fund's remaining LLC Interest (the Put Right) for an aggregate cash purchase price equal to 25 percent of the greater of: (a) The price the Fund originally paid for the Property; or (b) the current fair market value of the Property. The Put Right will be exercisable at the sole election of the Independent Fiduciary upon delivery of notice of such election to each of the Unions. For purposes of determining the price of the Put Right, the Applicant represents that the Independent Fiduciary will retain an Independent Appraiser to value the Property within 10 days of delivering notice of election in order to prepare an appraisal report. In addition, the Applicant represents that the Independent Fiduciary will be responsible for ensuring that the methodology used by such independent appraiser is properly applied. The Applicant further represents that the exercise price of the Put Right will be determined without a minority ownership discount for any illiquidity of the Fund's LLC Interest. Pursuant to the terms of the Operating Agreement, the purchase of the Fund's LLC Interest by the Unions in connection with the exercise of the Put Right will close on the later of: (1) 30 business days after delivery of notice; or (2) five business days after the Independent Appraiser determines the fair market value of the Property. The Applicant represents that, prior to the exercise of the Put Right, the LLC Interests held by the Unions will not be transferable, without the approval of the Independent Fiduciary.

11. The Applicant states that the initial Sale and subsequent Sale upon exercise of the Put Right would violate sections 406(a)(1)(A) and 406(a)(1)(D) of ERISA. Section 406(a)(1)(A) of ERISA prohibits a fiduciary of a plan from causing the plan to engage in a transaction, if he or she knows or should know that such transaction constitutes the sale or exchange or leasing of property between the plan and a party in interest with respect to the plan. Section 406(a)(1)(D) of ERISA prohibits a fiduciary of a plan from causing the plan to engage in a transaction, if he or she knows or should know that such transaction constitutes a transfer of assets of the plan to a party in interest. According to the Applicant, the Sale of the LLC Interests to the Unions and the exercise of the Put Right by the Independent Fiduciary on behalf of the Fund whereby the Unions would purchase the Fund's LLC Interest, would constitute violations of section 406(a)(1)(A) and (D) of ERISA, because the Unions are parties in interest with respect to the Fund under section 3(14)(D) of ERISA. Accordingly, the Applicant requests exemptive relief from sections 406(a)(1)(A) and 406(a)(1)(D) of ERISA for the initial Sale of the LLC Interests by the Fund to each of the Unions and for the subsequent Sale of the Fund's LLC Interest to the Unions upon the exercise of the Put Right.

*The Independent Fiduciary*

12. The Applicant represents that Intercontinental has been continuously involved in representing the Fund as its Independent Fiduciary in connection with the Property. In this regard, Intercontinental represents that it meets the Department's definition of a ''qualified independent fiduciary'' for purposes of the covered transactions.[8] Intercontinental explains that it has the training, experience, and facilities to act on behalf of the Fund regarding the Sale, the Put Right, and the management of the LLC and the Property. As described above, Intercontinental is a real estate consulting company and SEC-registered investment adviser with $2.5 billion in assets under management, that has developed, built, managed and owned approximately $6 billion of commercial real estate. Intercontinental also represents that it is not an affiliate of, or related to, the entities involved in the covered transactions, and that it has received during each federal tax year of Intercontinental's engagement with respect to the covered transactions less than 2 percent of Intercontinental's annual revenue, based on the prior tax year, from the parties in interest and their affiliates. Intercontinental represents that, with respect to the covered transactions, it acts solely for the Fund and the Fund pays Intercontinental's fees.

13. Intercontinental also represents that it understands it is required, as the Independent Fiduciary, to conform its conduct to the duties and responsibilities of a fiduciary under ERISA, and understands the liabilities imposed under ERISA for its failure to do so. Intercontinental represents that it will engage the law firms of Mayer Brown LLP and Bradley & Associates to provide advice during the course of the covered transactions.

14. The Applicant represents that Intercontinental will analyze and approve the terms of the Sale and Put

[8] See 29 CFR 2570.31(j).

Right; monitor and ensure that the terms of such covered transactions and the conditions of the exemption have been met; have the responsibility for the exercise of the Put Right on behalf of the Fund, in its sole discretion; and manage the operation of the LLC and the Property. Furthermore, the Applicant notes, Intercontinental will select the Independent Appraiser, and will verify the methodology used by the Independent Appraiser in establishing the fair market value of the Property.

*The Independent Appraiser*

15. Intercontinental represents that it retained US Realty Consultants, Inc. (US Realty) to serve as the Independent Appraiser and to prepare a qualified appraisal report for use in determining the fair market value of the Property for all purposes of the Sale and Put Right. The Applicant represents that Intercontinental will ensure that the methodology used by the Independent Appraiser is properly applied in determining the fair market value of the Property.

16. The Applicant represents that US Realty satisfies the Department's definition of a ''qualified independent appraiser'' for purposes of the covered transactions.[9] US Realty represents that it had no prior relationship with the Unions or the Fund. Furthermore, US Realty states that its fee of $5,250, as paid by the LLC, represents 1.4% of the gross billings of the Chicago office, which is responsible for performing the appraisal of the Property.

US Realty represents that Michael Maslanka and Noah McCloskey conducted the valuation of the Property. US Realty represents that Mr. Maslanka, Director for the Central Region, has 35 years of experience in real estate analysis, and has valued billions of dollars of real property, including commercial, residential, and special purpose properties such as theaters and railroad property. US Realty represents that Mr. Maslanka is a General Real Estate Appraiser certified in Illinois, Michigan, and Indiana and holds a ''Member of Appraisal Institute'' designation. US Realty represents that Mr. McCloskey has valued several billions of dollars of real property, including office, retail and industrial properties. US Realty represents that Mr. McCloskey is a General Real Estate Appraiser certified in Illinois, Indiana, Michigan, and Colorado.

17. In its appraisal report (the Appraisal), US Realty concluded that the market value of the Property, as of May 30, 2013, is $9,100,000. US Realty employed an income capitalization approach and a sales comparison approach to derive this market value. Both income and expense estimates were based upon an analysis of historic data provided from the subject in addition to data from comparable office properties. As detailed in the Appraisal, the discount rate and capitalization rate for the Property were within the range of the investment criteria of investors as well as comparable sales. These rates best emulate investor decision-making in analyzing factors such as the present value of the anticipated lease-up of vacant space, the implicit present value of above-market contract rent, the Property's tenant rollover profile, and other factors affecting the income stream over a period of time. The sales comparisons approach reflects the value of the Property based on an analysis of recent sales of similarly improved properties. Because the Property represents an investment capable of attracting investment capital, US Realty relied primarily on the value produced by the income capitalization approach, with the sales comparison approach providing additional support for the conclusion.

18. According to the Applicant, as of February 28, 2014, the Fund's interest in the LLC represented approximately 3.7 percent of the total Fund assets. After the Sale, the Fund's remaining interest in the LLC would represent approximately 0.9 percent of the Fund's total assets.[10]

*Statutory Findings*

19. The Applicant represents that the proposed exemption for the Sale would be administratively feasible because it is a one-time transaction for cash. Furthermore, the Applicant represents that an Independent Fiduciary will act on behalf of the Fund in connection with the approval of the Sale, the exercise of the Put Right, and the management of the LLC and the Property, thereby mitigating potential conflicts of interest and obviating the need for continued Departmental oversight.

20. The Applicant represents that the proposed exemption for the Sale is in the interest of the Fund and its participants and beneficiaries because the Sale will allow the Fund to diversify its investments by reducing its ownership stake in the LLC. Furthermore, the Applicant represents that the Unions, as owners of an interest in the Property, would be more likely to maintain their Leases, thus increasing the likelihood of long-term success of the Fund's investment in the Property. Also, due to the solvency of the Unions, the Applicant represents that the Fund has substantial assurance that the parties involved will be suitable company-owners with a vested interest in preserving the Property's value. Finally, the Applicant states that the Fund will not be responsible for paying any commissions, costs or other expenses in connection with the Sale, or the exercise of the Put Right, other than the legal fees of the Fund's counsel, the services of the Independent Fiduciary and the services of the Independent Appraiser.

21. The Applicant represents that the proposed exemption for the Sale is protective of the rights of Fund participants and beneficiaries, because the conditions for the exemption require that Intercontinental, as the Independent Fiduciary for the Fund, will have the sole discretion to determine whether the Fund proceeds with the Sale and whether the Fund will exercise the Put Right. In such event, the Fund will receive the fair market value for its LLC Interest, determined by the Independent Appraiser in an appraisal and verified by the Independent Fiduciary.

The Applicant states that the Independent Fiduciary will act as the manager of the LLC with the sole authority to manage its affairs, and will retain full and complete control over the management and operation of the Property. In this regard, the Applicant represents that no member of the LLC will, directly or indirectly, without the approval of the Independent Fiduciary: (1) Act for or on behalf of the LLC; (2) transact any business in the name of the LLC; or (3) sign documents for or otherwise bind the LLC. The Applicant represents that, prior to the exercise of the Put Right, the Unions must seek approval from the Independent Fiduciary prior to transferring the LLC Interests. The Applicant represents further that the Independent Fiduciary will enforce compliance with all conditions and obligations imposed on any party dealing with the Fund, ensure that the conditions of the proposed exemption, if granted, are met, and will ensure that the covered transactions remain in the interest of the Fund. Moreover, any Trustee of the Fund must recuse himself or herself from any vote regarding the termination or removal of the Independent Fiduciary for the Fund if he or she is an officer (or a relative of an officer) of any of the Unions.

Finally, since its acquisition of the Property, the Applicant notes, the

[9] See 29 CFR 2570.31(i).

[10] The calculations are based on the information reported on the Form 5500 for the plan year ending February 28, 2014.

Fund's ownership interest in the Property has constituted five percent or less of the Fund's assets, and immediately after the Sale the Fund's ownership interest in the Property will be less than two percent of the Fund's assets.

*Summary*

22. In summary, the Applicant represents that the proposed exemption, if granted, satisfies the statutory criteria of section 408(a) of ERISA, for the reasons described above, including the following:

(a) The Fund will receive from each of the Unions as consideration for the Sale of the LLC Interests, a cash amount equal to 25 percent of the greater of: (1) The original purchase price paid by the Fund, or (2) the fair market value of the O'Hare Corporate Center in Park Ridge, Illinois (the Property), determined on the date of the Sale by an Independent Appraiser;

(b) The Fund, upon exercise of the Put Right, will receive from the Unions a one-time aggregate cash amount equal to 25 percent of the greater of: (1) The original purchase price paid by the Fund, or (2) the fair market value of the Property on the date of exercise of the Put Right, as determined by an Independent Appraiser;

(c) The Sale and the exercise of the Put Right will each be one-time transactions for cash;

(d) The Independent Fiduciary will: (1) Analyze and approve the terms of the Sale and Put Right; (2) ensure that the terms of the Sale and Put Right and the conditions of the exemption are met; (3) have sole responsibility for the exercise of the Put Right on behalf of the Fund; (4) have sole responsibility and authority for the management and the operation of the LLC and the Property; and (5) select the Independent Appraiser and verify the methodology used by the Independent Appraiser in determining the fair market value of the Property for all purposes under this proposed exemption;

(e) An Independent Appraiser, who is selected by the Independent Fiduciary, will establish the fair market value of the Property for purposes of the Sale and the Put Right, using a methodology approved by the Independent Fiduciary;

(f) The Fund will not pay any commissions, costs or other expenses in connection with the Sale and Put Right, other than the legal fees of the Fund's counsel, the services of the Independent Fiduciary and the services of the Independent Appraiser;

(g) Since its acquisition of the Property, the Fund's ownership interest in the Property has constituted five percent or less of the Fund's assets, and immediately after the Sale the Fund's ownership interest in the Property will be less than two percent of the Fund's assets;

(h) No member of the LLC will, directly or indirectly, without the approval of the Independent Fiduciary: (1) Act for or on behalf of the LLC; (2) transact any business in the name of the LLC; or (3) sign documents for or otherwise bind the LLC; and

(i) No LLC Interests will be transferable by the Unions prior to the exercise of the Put Right by the Fund, without the approval of the Independent Fiduciary.

**Notice to Interested Persons**

Notice of the proposed exemption will be provided to all interested persons within 15 days of the publication of the notice of proposed exemption in the **Federal Register**, by first class U.S. mail to the last known address of all such Participants. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2).[11] The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 45 days of the publication of the notice of proposed exemption in the **Federal Register**. All comments will be made available to the public.

*Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

**Local 268, Sheet Metal Workers International Association, AFL–CIO (the Union) Located in Caseyville, IL**

[Application No. L–11794]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act, shall not apply to the sale by the Fund of certain improved real property located at 2727 N. 89th Street, Caseyville, IL 62232 (the Building), to the Union (the Sale), provided that the following conditions have been met:

(a) The Sale is a one-time transaction for cash;

(b) At the time of the Sale, the Fund receives the greater of either: (1) $110,226.48; or (2) the fair market value of the Building, as established by a qualified independent appraiser (the Appraiser), as described in condition (c), as of the date of Sale;

(c) Before the date of Sale, an Appraiser who satisfies the Department's definition of ''qualified independent appraiser'' will be retained by the Independent Fiduciary on behalf of the Fund without any involvement of the Union or any other party to the covered transactions or any planned future transactions, and will conduct a full, independent Appraisal (the Appraisal) of the Building for purposes of the Sale that complies in all respects with applicable appraisal standards;

(d) A qualified independent fiduciary (the Independent Fiduciary), acting on behalf of the Fund, represents the Fund's interests for all purposes with respect to the Sale, and: (1) Determines, among other things, that it is in the best interest of the Fund to proceed with the Sale; and (2) reviews and approves the purchase price and methodology used by the Appraiser in its Appraisal;

(e) The Fund pays no fees, commissions or other expenses associated with the Sale; and

(f) The terms and conditions of the Sale are at least as favorable to the Fund as those obtainable in an arm's-length transaction with an unrelated third party.

**Summary of Facts and Representations**

*Background*

1. Local 268, Sheet Metal Workers International Association, AFL–CIO (the Applicant or the Union) serves the Southern third of the State of Illinois. The Union was formed as an amalgamation of five smaller local unions on May 18, 1939. It is a local chapter of the Sheet Metal Workers International Association, an

[11] The Department considers exemption applications filed prior to December 27, 2011 under the Prohibited Transaction Procedures regulation set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

organization representing workers in the United States, Canada, and Puerto Rico, who work in the construction, manufacturing, service, railroad and shipyard industries.

2. The Local 268 Joint Apprenticeship and Training Fund (the Fund) is a jointly administered apprenticeship and training fund established under Section 302(c)(5) of the Taft Hartley Act by the Union and the Southern Illinois Chapter, Sheet Metal Contractors National Association (Association). The Fund was established for the purpose of supporting a program for the training and education of sheet metal apprentices, journeymen and other individuals designated by the Fund trustees (the Trustees). The Fund is used to defray the reasonable expenses of the apprenticeship and training programs, including the costs of the establishment and maintenance of apprenticeship and training programs, employment of sufficient personnel, and administration of salaries, supplies, facilities (including the leasing or acquisition of real property and improvements thereon), tools, equipment, textbooks, and other instructional materials.

3. The Applicant represents that the current Trustees include employer-appointed Trustees, who are unaffiliated with the Union, and Union Trustees. The paid staff of the Fund includes the Fund coordinator (the Fund Coordinator), who is employed full time by the Fund, and two part-time instructors, who also work as hourly paid sheet metal workers and are employed by contributing employers. The Fund Coordinator and these instructors are not Trustees.[12]

4. The Applicant represents that the Fund's offices are located in the current union hall (the Union Hall), located at 2701 N. 89th Street, Caseyville, Illinois 62232 (Building U). The Applicant represents that the Union purchased Building U in 1984. In addition to the office space, beginning in 1986, the Fund maintained classrooms and a shop that were also located in Building U. Under its current leasing arrangement with the Union (the Old Lease), the Fund uses 3,800 square feet of Building U and pays rent of $312 per month to the Union.

5. The Applicant represents that the Trustees expect to expand the Fund's training program to include service work, a computer lab for computer training, a larger welding lab, and additional equipment for training such as a press brake. In connection therewith, the training program staff has recently increased from two to three employees. The Applicant represents that the Trustees' plan for the Fund to increase training programs requires greater space than the current space being leased by the Fund from the Union in Building U.

The Sale

6. The Applicant represents that in 2010, the Fund purchased the building and real property located at 2727 N. 89th Street (Building A), from an unrelated third party at a price of $65,000.00. The Applicant represents that Building A was purchased as a possible future site for the expansion of the Fund's training program. The Applicant represents further that Building A was originally constructed as a three bedroom residential home, but it was converted to commercial and industrial use, and has 1,776 square feet. The Applicant states that Building A borders the property of Building U and shares a parking lot with Building U. The Applicant represents that, since purchasing Building A, the Fund has spent $16,776.79 to maintain and improve Building A, including replacing wiring that did not comply with the applicable electrical regulations and comprised of exposed wires, replacing the heating and air conditioning system, and installing new security doors to secure Building A. The Fund has also paid $13,938.76 in real estate taxes, $4,027.93 in utilities, and $10,483.00 in insurance costs with respect to Building A. The Applicant states that the total in holding costs and capital improvement costs (the Holding Costs) incurred by the Fund is $45,226.48. Thus, the cost of the Fund's acquisition and holding of Building A has been $110,226.48.

7. The Applicant represents that the Fund did not purchase Building A with the intent of eventually selling it to the Union. Nevertheless, the Applicant states that the sale of Building A to the Union (the Sale) will provide additional liquidity to the Fund and will dispose of real property which is no longer needed by the Fund. Moreover, the Applicant states that the Union would use Building A and the land that it sits on as a site for a new Union Hall. The Applicant represents that the proposed price for which the Union will purchase Building A from the Fund is equal to the greater of: (A) $110,226.48, representing the cost of acquisition and Holding Costs related to Building A that have been incurred by the Fund, or (B) the fair market value of Building A, as established by a qualified independent appraiser (the Appraiser), as of the date of Sale. As described in further detail below, an Appraiser selected by the qualified independent fiduciary (the Independent Fiduciary) without any assistance from a related party or a party to any current or planned future transactions with the Union, the Fund, or a related party will conduct the appraisal (the Appraisal) as of the date of Sale.

8. The Applicant states that, because the Union is a party in interest to the Fund under section 3(14)(D) of the Act, the Sale would constitute a prohibited transaction under section 406(a)(1)(A) and (D) of the Act. Furthermore, because certain officers of the Union are also Trustees of the Fund and they may have an interest in causing the Fund to engage in the transaction with the Union, the Sale may also constitute a prohibited transaction under section 406(b)(1) and (2) of the Act. Therefore, the Applicant requests an exemption from sections 406(a)(1)(A) and (D) and 406(b)(1) and (2) of the Act for the Sale.

The New Lease

9. The Applicant represents that in 2012, the Union offered a new lease to the Fund for all of Building U, which would include a total of 9,600 square feet (the New Lease). The Applicant represents that the Union offered a below market rental rate of $3 per square foot, or $2,400 per month. In 2012, the Applicant engaged Tade Appraisal Company (Tade) to conduct an appraisal of Building U (the Tade Appraisal). Tade represents that it has not had any business engagements with the Union or any of its affiliates other than the Tade Appraisal. Furthermore, Tade represents that the fee paid in connection with the Tade Appraisal represented less than 1% of its annual income. Tade represents that its Appraiser, Scott Tade, is an Illinois-certified General Real Estate Appraiser in Illinois with 30 years of experience in the real estate field. In his career, Mr. Tade has worked on valuations of residential, commercial and retail properties. The Tade Appraisal valued Building U at $425,000, and included an analysis of rental rates for comparable

[12] The Applicant states that the Fund Coordinator's duties include serving as an instructor for Fund participants and that he receives no additional compensation when he is instructing. Furthermore, the Applicant represents that the part-time instructors do not work for contributing employers at the same time that they are teaching classes for the Fund. The Applicant represents that it is relying on section 408(b)(2) of the Act in connection with the provision of services by employees of contributing employers to the Fund, and the payment by the Fund of compensation for such services. The Department is not expressing a view herein as to whether the Fund has satisfied the conditions of section 408(b)(2) of the Act with respect to the provision of services by such employees to the Fund and the payment of compensation by the Fund in connection with such services.

properties. In this regard, Tade represents that, for comparable properties, rental rates were $2.21 to $5.14 per square foot for a triple net lease.

10. The Applicant represents that the New Lease is the best option for expanding the training program within the Fund's projected budgets. The Applicant represents that Building U is already constructed with a shop and classroom space. Moreover, the Fund can expand the shop space and install a computer lab in Building U over time with equipment purchases. The Applicant represents that the leasing of Building U will thus permit the Fund to expand the training program incrementally, without expending large sums of money to purchase and renovate another building.

11. Furthermore, the Applicant states that unless the Union can move its Union Hall to Building A, it will not be able to lease all of Building U to the Fund at the below market rent stated above. Therefore, according to the Applicant, the Fund would not be able to realize its best option to expand the training program.

12. The Applicant represents that the New Lease would comply with PTE 78–6. In this regard, the Applicant represents that the New Lease between the Fund and the Union for use as classroom space would be based on terms at least as favorable to the Fund as an arm's-length transaction with an unrelated party would be. Furthermore, the Applicant represents that the New Lease would be appropriate and helpful in carrying out the Fund's purposes, and the Fund will maintain or cause to be maintained for a period of 6 years from the termination of any such transaction such records as are necessary to demonstrate continued compliance with the conditions of PTE 78–6. Finally, as described below, the Independent Fiduciary negotiated and approved the terms of the New Lease.

The Appraisal

13. The Applicant represents that prior to the date of Sale, the Independent Fiduciary will engage an Appraiser who satisfies the Department's definition of ''qualified independent appraiser'' to perform an Appraisal of Building A on behalf of the Fund. The Applicant represents that the Appraiser will be selected by the Independent Fiduciary without any involvement of the Union or any other party to the covered transactions or any party to any planned future transactions. The Appraisal will establish the value of Building A as of the date of Sale and will be a full, independent appraisal that complies in all respects with applicable appraisal standards.

The Independent Fiduciary's Report

14. The Applicant represents that the Trustees retained Rebecca Kling to serve both as the Independent Fiduciary and as legal counsel to the Fund. The Independent Fiduciary represents in her Statement of Independent Fiduciary that she was engaged by the Fund to represent its interests related to the Sale and the New Lease. The Independent Fiduciary represents that she is an experienced attorney with 28 years of experience specializing in commercial and residential real estate transactions, including acquisition, development and finance. The Independent Fiduciary represents that, prior to the Sale and the New Lease, she had no relationship with the Fund or the Union, and it is not anticipated that a relationship would continue following the consummation of the transactions. The Independent Fiduciary represents that she reviewed the terms of the Sale, and negotiated and approved the terms of the New Lease.

15. The Independent Fiduciary represents that Building A is vacant and serves no purpose in the successful operation or financial well-being of the Fund, except as dormant investment property. The Independent Fiduciary represents that the Sale for a price of $110,226.48, which takes into account the Holding Costs incurred by the Fund since purchasing the Property is fair, reasonable and beneficial to the Fund, its participants and beneficiaries.[13] Furthermore, the Independent Fiduciary believes that, because the proposed agreement of Sale between the Fund and the Union contains minimal, limited representations and warranties on the part of the Fund, as seller; with the Sale being conducted primarily on an ''as-is, where-is'' basis; the Fund and its participants and beneficiaries are adequately protected from potential liability.

16. The Independent Fiduciary represents that the Sale furthers the interest of the Fund and its participants and beneficiaries because the Fund will have no use for Building A after entering into the New Lease and because the purchase price for Building A offered by the Union includes the Fund's Holding Costs related to Building A. Furthermore, the Independent Fiduciary represents that Building U is the current site of the Fund's training programs and provides more space for expansion than Building A, and the New Lease reflects the Union's willingness to subsidize the Fund's rent at market to below-market pricing as indicated in the Tade Appraisal. Moreover, the Independent Fiduciary represents that, based on information contained in the June 30, 2012, audit report of the Fund, the Sale will not significantly change or adversely impact the Fund's asset allocation.

17. The Independent Fiduciary represents that she drafted the agreement for the New Lease to be entered into between the Fund as tenant and the Union as landlord. Based upon her review of the Tade Appraisal, she believes that the rent price of $3 per square foot, as reflected in the New Lease terms, is at least as favorable to the Fund as would be negotiated and agreed to in good faith by any disinterested third party tenant in an arms-length transaction.

**Statutory Findings**

18. The Applicant represents that the requested exemption with respect to the Sale is administratively feasible because the Sale is a one-time transaction of real property for cash between the Union and the Fund, which will be easy to implement if approved by the Department. The Applicant represents that the Sale is in the interest of the Fund and its participants and beneficiaries because it will permit the expansion of the training program at a below market rent. Furthermore, the Applicant represents that the Fund will receive greater than fair-market value in the Sale, accounting for Holding Costs. The Applicant states further that the Sale is protective of the Fund and its participants and beneficiaries because the Independent Fiduciary, an experienced real estate attorney, was engaged by the Fund to represent its interests related to the Sale. In this capacity, the Independent Fiduciary represents that she reviewed the terms of the Sale, including the purchase price, and negotiated and approved the terms of the New Lease.

**Summary**

19. In summary, the Applicant represents that the proposed exemption satisfies the statutory criteria for an exemption under section 408(a) of the Act for the reasons stated above and for the following reasons:

a. The Sale is a one-time transaction for cash;

b. At the time of the Sale, the Fund receives the greater of either: (1) $110,226.48; or (2) the fair market value

[13] In this regard, the Applicant has submitted two recent appraisals to the Department that set the price of Building A at approximately $72,500.

of Building A, as established by the Appraiser, as of the date of Sale;

c. Before the date of Sale, the Appraiser will be retained by the Independent Fiduciary on behalf of the Fund without any involvement of the Union or any other party to the covered transactions or any planned future transactions;

d. The Independent Fiduciary, acting on behalf of the Fund, represents the Fund's interests for all purposes with respect to the Sale, and: (1) Determines, among other things, that it is in the best interest of the Fund to proceed with the Sale; and (2) reviews and approves the purchase price and methodology used by the Appraiser in its Appraisal; and

e. The Fund pays no fees, commissions or other expenses associated with the Sale.

**Notice to Interested Persons**

Notice of the proposed exemption will be given to all Union members within 15 days of the publication of the notice of proposed exemption in the **Federal Register**, by first class U.S. mail to the last known address of all such individuals, and by posting in the Union hall in a prominent location. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 45 days of the publication of the notice of proposed exemption in the **Federal Register**. All comments will be made available to the public.

*Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

**EXCO Resources, Inc. 401(k) Plan (the Plan) Located in Dallas, TX**

[Application No. D–11821]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

*Section I: Transactions*

If the proposed exemption is granted, effective for the period beginning December 17, 2013, and ending January 9, 2014, the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code,[14] shall not apply:

(a) To the acquisition of certain transferable subscription right(s)(the Right or Rights) by the individually-directed account(s) (the Account or Accounts) of certain participant(s) (the Invested Participant(s)) in the Plan, in connection with an offering (the Offering) of shares of the common stock (the Common Stock) of EXCO Resources, Inc. (EXCO) by EXCO, the plan sponsor (the Plan Sponsor) and a party in interest with respect to the Plan; and

(b) To the holding of the Rights received by the Accounts during the subscription period of the Offering; provided that the conditions set forth in Section II of this proposed exemption were satisfied for the duration of the acquisition and holding of such Rights.

*Section II: Conditions*

(a) The acquisition of the Rights by the Accounts of Invested Participants occurred in connection with the Offering, and the Rights were made available by EXCO on the same material terms to all shareholders of the Common Stock of EXCO, including the Accounts of Invested Participants;

(b) The acquisition of the Rights by the Accounts of Invested Participants resulted from an independent corporate act of EXCO;

(c) Each shareholder of the Common Stock of EXCO, including each of the Accounts of Invested Participants, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Common Stock held by each such shareholder, as of 5:00 p.m. New York City time, on December 19, 2013 (the Record Date);

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investment of the Accounts by the Invested Participants, all of whose Accounts in the Plan held the Common Stock;

(e) The decision with regard to the holding and disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights;

(f) If any of the Invested Participants failed to give instructions as to the exercise of the Rights received in the Offering, or gave instructions to the Plan trustee (the Trustee) to sell such Rights, such Rights were automatically sold in blind transactions on the New York Stock Exchange (NYSE), and the proceeds from such sales were distributed *pro-rata* to the Accounts of such Invested Participants whose Rights were sold;

(g) No brokerage fees, no commissions, no subscription fees, and no other charges were paid by the Plan or by the Accounts of Invested Participants with respect to the acquisition and holding of the Rights, and no commissions, no fees, and no expenses were paid by the Plan or by the Accounts of Invested Participants to any related broker in connection with the sale or exercise of any of the Rights, or with regard to the acquisition of the Common Stock through the exercise of such Rights;

(h) EXCO did not influence any Invested Participant's election with respect to the Rights; and

(i) The terms of the Offering were described to the Invested Participants in clearly written communications, including, but not limited to, the prospectus for the Rights Offering.

*Effective Date:* This proposed exemption, if granted, will be effective for the period beginning on December 17, 2013, the commencement date of the Offering, and ending on January 9, 2014, the expiration date of the Offering.

**Summary of Facts and Representations**

*Background*

1. The Plan, which was adopted, effective as of January 1, 1999, is a defined contribution, 401(k) retirement saving plan that provides for a cash and deferred arrangement. The Plan is a participant directed account plan designed to comply with the requirements of 404(c) of the Act. As of December 31, 2013, there were 863 participants in the Plan. Also, as of December 31, 2013, the Plan had total net assets of $100,335,599.

Prudential Retirement Insurance and Annuity Company is the third-party administrator and record-keeper for the Plan. Prudential Bank and Trust Company is the Trustee. The Plan is administered by a committee (the

[14] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Committee), composed of certain appointed employees of EXCO. The Committee has the responsibility of selecting the investment options into which Plan participants can direct their contributions.

2. EXCO (the Applicant) is the Plan Sponsor. A Texas corporation incorporated in October 1955, EXCO is an independent oil and natural gas company engaged in the exploitation, exploration, acquisition, and development of onshore oil and natural gas properties, with a focus on shale resource plays. EXCO's principal operations are conducted in certain key U.S. oil and natural gas areas, including Texas, Louisiana, and the Appalachia region. EXCO's principal office is located in Dallas, Texas. According to EXCO's Annual Report on Form 10–K for the year ended December 31, 2013, on a consolidated basis, EXCO and its consolidated subsidiaries had total assets of $2,408,628,000, total liabilities of $2,260,723,000, and total shareholders' equity of $147,905,000.

3. Among the investment options offered to Plan participants are various types of securities, including shares of EXCO Common Stock. Investment by Plan participants in the Common Stock is entirely voluntary. The Accounts in the Plan acquire the Common Stock only as a result of participant-directed investment decisions. The Invested Participants whose Accounts in the Plan are invested in the Common Stock are employees, former employees, or beneficiaries of employees of EXCO. As of the Record Date (December 19, 2013), the Accounts of Invested Participants held 704,396 shares of the Common Stock.

4. The Common Stock is publicly-traded on the NYSE under the symbol ''XCO.'' The Common Stock has a par value $0.001 per share. The Common Stock held by the Accounts of Invested Participants is the same type and class of shares as those held by other the Common Stock shareholders of EXCO. The Common Stock is a ''qualifying employer security,'' as defined under section 407(d)(5) of the Act.

*EXCO's Considerations*

5. In connection with its regular review of EXCO's liquidity and financial condition, the Board of Directors of EXCO (the Board) considered various alternatives in both debt and equity markets in order to strengthen EXCO's liquidity and financial ability following several significant acquisitions and dispositions during 2013. The alternatives considered by the Board included a rights offering and an underwritten public offering of additional shares of Common Stock. After assessing these alternatives, a decision was made to conduct the Offering.

In this regard, on November 22, 2013, the directors on the Board (the Disinterested Directors) who are not affiliated with certain investors (the Investors) [15] in the Common Stock by unanimous vote approved: (a) The basic terms of the Offering; and (b) the subscription price of $5.00 per share of the Common Stock. Furthermore, on the same date, the Investors agreed to the basic terms of their commitments under agreements (the Agreements) to purchase certain amount of shares of Common Stock in the Offering, and the Disinterested Directors approved these commitments with the Investors.

*The Offering*

6. The Offering commenced on December 17, 2013.[16] The Offering permitted shareholders of record, as of the Record Date, who received the Rights, to purchase up to an aggregate of 44,995,665 shares of Common Stock at a price of $5.00 per share, for an aggregate Offering price of $224,978,325. All shareholders also had the right to acquire additional Rights by purchasing additional shares of Common Stock on the open market (or through their Plan Accounts) prior to the Record Date. Further, all shareholders holding the Rights were entitled to an over-subscription privilege. However, the ability of any shareholder, including the Accounts, to exercise their over-subscription privilege was limited by the number of shares such shareholder owned as of the Record Date. Thus, all shareholders had the ability to increase or decrease their shares of Common Stock from the commencement of the Offering through the Record Date. The Offering expired on January 9, 2014.

7. With respect to the trading prices of the Common Stock during the Offering period, it is represented that at the close of business on December 16, 2013, the Common Stock was trading on the NYSE at $5.01 per share, and on December 17, 2013, the commencement date of the Offering, the Common Stock was trading on the NYSE at $4.83 per share. On the Record Date, the Common Stock was trading on the NYSE at $4.99 per share. On December 24, 2013, the Common Stock traded at $5.41 per share. The closing price of the Common Stock on the expiration date of the Offering (January 9, 2014), was $4.99 per share. Thus, during the subscription period of the Offering, the closing price of the Common Stock fluctuated between $4.83 and $5.41 per share.

Accordingly, exemptive relief has been requested from December 17, 2013, the commencement date of the Offering, to January 9, 2014, the expiration date of the Offering.

*The Rights*

8. The Invested Participants were notified of the issuance of the Rights in a news release and in a posting on the EXCO's Web site during the month of December 2013. In addition, each Invested Participant was provided detailed written information regarding the Rights Offering, which included: (a) A prospectus describing the Offering, (b) frequently asked questions and answers regarding the Offering, (c) an election form, (d) a return envelope addressed to Continental Stock Transfer & Trust Company (Continental), the subscription agent, and (e) a subscription form.

The Rights entitled the holders thereof to basic subscription rights as well as to an over-subscription privilege. Under the basic subscription rights, each holder of a Right was entitled to purchase, through the exercise of such Right, 0.25 of one (1) share of Common Stock for each whole share of Common Stock held by the shareholder, at a subscription price of $5.00 per share of Common Stock. Under the over-subscription privilege, each holder was entitled to subscribe for additional shares of Common Stock, subject to certain limitations and allocation procedures, up to the number of shares of Common Stock that were not subscribed for by the other holders of the Rights, pursuant to their basic subscription rights.

It is represented that there were valid exercises to purchase an aggregate of 28,248,049 shares of Common Stock, pursuant to directions from holders of the Rights. The exercise of the Rights resulted in gross proceeds for EXCO of approximately $141.2 million. Together with the shares of Common Stock issued to the Investors pursuant to the Agreements, the Offering resulted in EXCO receiving gross proceeds of approximately $272.9 million.

[15] The Investors referred to above are WL Ross & Co. LLC and its affiliates and Hamblin Watsa Investment Counsel Ltd. and its affiliates.

[16] The Applicant notes that the Record Date occurred on December 19, 2013. It is represented that there was no material impact to the Accounts of Invested Participants as a result of the Record Date being set two (2) days after the commencement of the Offering. In this regard, the number of Rights that each shareholder, including the Accounts, was entitled to receive was based on the number of shares each shareholder owned, as of the Record Date, and was not fully determined until the Record Date.

*Shareholder Elections*

9. The election form provided an Invested Participant with three (3) choices with respect to the Rights. In this regard, the Invested Participant could direct Continental: (a) To not exercise the Rights, with the express understanding that the Trustee would attempt to sell the Rights on the NYSE; (b) to neither exercise the Rights nor attempt to sell the Rights, with the understanding that the Rights would expire at the end of the Offering; or (c) to exercise the number of Rights elected by the Invested Participant, with the express understanding that if the Invested Participant did not elect to exercise all of the Rights, the Trustee would attempt to sell the remaining Rights on the NYSE. Each Right was transferable and was traded on the NYSE under the symbol ''XCO–RT'' from December 23, 2013 until 4:00 p.m. New York City time on January 8, 2014.

As noted in the prospectus and on the election form, in order for the Invested Participant to exercise the Rights, there must have been sufficient funds in the Guaranteed Income Fund under the Invested Participant's Account to cover the total subscription payment. If the value of the investments in the Guaranteed Income Fund did not equal or exceed the total subscription payment required, the Rights held by the Invested Participant's Account were exercised for shares of Common Stock to the fullest extent possible based on the liquidated value of the Account invested in the Guaranteed Income Fund, to the nearest whole share.

Following receipt of the election form by Continental, the Trustee and Continental confirmed and reconciled the identity of the Invested Participants who had made an election to sell their Rights, to exercise their Rights, or to allow all of their Rights to expire. The Trustee placed the order with Continental to purchase the Common Stock on behalf of the Accounts of the Invested Participants who elected to sell or to exercise the Rights, and liquidated the appropriate investments held in the Guaranteed Income Fund of such Accounts to purchase the Common Stock. Following the closing of the Offering, the shares of Common Stock purchased and the proceeds of the sale of the Rights were then credited to the Accounts of the Invested Participants.

10. As of the Record Date, 307 Accounts of Invested Participants held 704,396 shares of Common Stock. As of the Record Date, the total fair market value of the Common Stock held by the Plan in all Accounts was $3,519,025, and the approximate percentage of the fair market value of the total assets of the Plan invested in the Common Stock was 3.49%. Also, as of the Record Date, the shares of Common Stock held in the Accounts of Invested Participants constituted approximately 0.3 percent (0.3%) of the shares of Common Stock outstanding.

11. As a result of the Common Stock held by the Accounts of Invested Participants on the Record Date, the Plan acquired 704,396 Rights to acquire up to 176,099 shares of Common Stock during the Offering. Of the Rights acquired by the Plan on behalf of the Accounts, all such Rights were either exercised or sold, except for the Rights held by two (2) Accounts of Invested Participants who elected to allow a total of 25,961 combined Rights to expire. Of the 9,954 Rights acquired by the Accounts of three (3) Invested Participants as a result of the Offering, it is represented that 9,952 Rights held by these Accounts were exercised [17] for a total of 2,488 shares of Common Stock, which shares were eligible for trading on the NYSE by the Accounts.

The exercise of the Rights held in the Accounts of the Invested Participants was subject to the requirement that on the date of the exercise of the Rights, the prevailing market price on the NYSE for a share of Common Stock (the Prevailing Price), was required to equal or exceed the per share subscription price of the Rights. Accordingly, the Invested Participants could instruct the Trustee to exercise the Rights and acquire shares only if the Prevailing Price of a share of Common Stock equaled or exceeded $5.00 per share.

Notwithstanding the fact that the price per share of Common Stock on the expiration date of the Offering was $4.99 per share, it is represented that the Prevailing Price of a share of Common Stock exceeded the subscription price of $5.00 per share at the time the three (3) Invested Participants exercised the Rights on behalf of their Accounts. In this regard, the Rights held by these Accounts were all exercised on January 7, 2014, at an exercise price of $5.07 per share. The three (3) Invested Participants, respectively, exercised the following number of Rights, 7,944, 1,044, and 964.

It is also represented that the three (3) Invested Participants had an over-subscription privilege. One of these Invested Participants exercised her over-subscription privilege and acquired an additional 482 shares of Common Stock.

The Trustee was also able to sell the Rights on the NYSE. In this regard, the Trustee, on behalf of the Accounts of 302 Invested Participants, sold approximately 668,481 Rights held in such Accounts for total sales proceeds of $8,235.25. The sale proceeds were allocated *pro-rata* to the Accounts of the Invested Participants whose Rights were sold.

12. No brokerage fees, no commissions, no subscription fees, and no other charges were paid by the Plan or by any of the Accounts of Invested Participants with respect to the acquisition and holding of the Rights, and no commissions, no fees, and no expenses were paid by the Plan or by any of the Accounts of Invested Participants to any related broker in connection with the sale or the exercise of any of the Rights, or with regard to the acquisition of the Common Stock through the exercise of such Rights.

*Requested Relief*

13. EXCO has requested an exemption for: (a) The acquisition of the Rights by the Accounts of Invested Participants in connection with the Offering of the Common Stock by EXCO; and (b) the holding of the Rights by the Accounts of Invested Participants during the subscription period of the Offering. EXCO initially requested relief for the sale of the Rights by the Trustee, but subsequently withdrew its request for such relief, as the sale of the Rights occurred in blind transactions on the NYSE.

Section 406(a)(1)(E) of the Act prohibits the acquisition on behalf of the plan of any ''employer security'' in violation of section 407(a). Section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of the plan to permit such plan to hold any ''employer security'' if he knows or should know that the holding of such security violates section 407(a) of the Act. Section 407(a) of the Act prohibits a plan from acquiring or holding employer securities that are not ''qualifying employer securities.''

It is represented that the Rights acquired by the Accounts of Invested Participants satisfy the definition of ''employer securities,'' pursuant to section 407(d)(1) of the Act. However, as the Rights were not stock or marketable

[17] It is represented that the Accounts relied on the relief provided by the statutory exemption, pursuant to section 408(e) of the Act for the exercise of the Rights. Accordingly, the Department is not providing any relief herein from such prohibited transaction provisions with respect to the exercise of the Rights. In addition, the Department is offering no view on whether the requirements of the statutory exemption provided in section 408(e) of the Act and the Department's regulations, pursuant to 29 CFR 2550.408(e) were satisfied or whether the statutory exemption is applicable to the exercise of the Rights.

obligations, such Rights do not meet the definition of ''qualifying employer securities,'' as set forth in section 407(d)(5) of the Act. Accordingly, the subject transactions constitute an acquisition and holding on behalf of the Accounts of Invested Participants, of employer securities which are not qualifying employer securities, in violation of sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act.

EXCO has also requested relief from the prohibitions of section 406(b)(1) and 406(b)(2) of the Act. Section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a fiduciary from engaging in his individual or any other capacity to act in any transaction involving the plan on behalf of a party (or represent a party) whose interest are adverse to the interest of the plan or the interests of its participants or beneficiaries.

As the employer any of whose employees are covered by the Plan, EXCO is a party in interest with respect to the Plan, pursuant to section 3(14)(C) of the Act. Accordingly, the acquisition and holding by the Accounts of Invested Participants of the Rights issued by EXCO, a party in interest with respect to the Plan, would involve self-dealing and conflicts of interest for which relief is needed.

14. It is represented that the subject transactions have already been consummated. In this regard, the Applicant represents that there was insufficient time between the dates when the Accounts of Invested Participants acquired the Rights and when such Rights were exercised, sold, or expired, to apply for and be granted an exemption. EXCO therefore is seeking a retroactive exemption to be granted, effective from December 17, 2013, the commencement date of the Rights Offering, to January 9, 2014, the expiration date of the Offering.

15. EXCO represents that the proposed exemption is administratively feasible. In this regard, the acquisition and holding of the Rights by the Accounts of Invested Participants was a one-time transaction that involved an automatic distribution of the Rights to all shareholders that resulted from an independent corporate act of EXCO. It is represented that corporations often make a rights offering available to all shareholders.

16. EXCO represents that the transactions which are the subject of this proposed exemption are in the interest of the Accounts of Invested Participants, because the subject transactions represented a valuable opportunity to such Accounts to buy the Common Stock at a potential discount or to sell the Rights and receive the proceeds from such sale. The Rights Offering also provided all of EXCO's shareholders, including the Accounts of Invested Participants, with the opportunity to participate in the subject transactions on a *pro-rata* basis.

*Safeguards of Exemption*

17. EXCO represents that the proposed exemption provides sufficient safeguards for the protection of the Accounts of Invested Participants and the beneficiaries of such Accounts. In this regard, the Applicant states that participation in the Offering protected the Accounts of the Invested Participants from having their interests in EXCO diluted as a result of the Offering. Further, under the terms of the Offering, all shareholders, including the Accounts of Invested Participants acquired and held the Rights automatically, at no charge.

In addition, the Applicant explains that EXCO made the Rights available on the same terms to all shareholders of the Common Stock, including the Accounts. In this regard, each shareholder of EXCO, including each of the Accounts, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Common Stock held by such shareholder, as of the Record Date. Under the terms of the Offering, one (1) Right was issued for each whole share of the Common Stock held by each shareholder on the Record Date. Each of the Rights entitled the shareholders, including the Accounts, to purchase, through the exercise of such Rights, the Common Stock issued by EXCO in connection with the Offering.

Further, the Applicant states that the Accounts of Invested Participants were protected against economic loss by exercising the Rights or by selling the Rights. If the Invested Participants affirmatively elected to sell the Rights or did not make an election with respect to the Rights, then the Trustee automatically sold the rights on the NYSE. If the Invested Participants elected to exercise their Rights, such Rights were exercised in accordance with their instructions, provided that the Prevailing Price on the date of the exercise equaled or exceeded the subscription price per share, thereby further protecting the Invested Participants.

**Summary**

18. In summary, EXCO represents that the subject transactions satisfy the statutory criteria of section 408(a) of the Act because:

(a) The acquisition of the Rights by the Accounts of Invested Participants occurred in connection with the Offering, and the Rights were made available by EXCO to all shareholders of EXCO, including the Accounts of Invested Participants;

(b) The acquisition of the Rights by the Accounts of Invested Participants resulted from an independent corporate act of EXCO;

(c) Each shareholder of the Common Stock of EXCO, including each of the Accounts of Invested Participants, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of EXCO Common Stock held by each such shareholder, as of the Record Date;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investment of the Accounts by the Invested Participants all of whose Accounts in the Plan held the Common Stock;

(e) The decision with regard to the holding and disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights;

(f) If any of the Invested Participants failed to give instructions as to the exercise of the Rights received in the Offering, or gave instructions to the Trustee to sell such Rights, such Rights were automatically sold in blind transactions on the NYSE, and the proceeds from such sales were distributed *pro-rata* to the Accounts of such Invested Participants whose Rights were sold;

(g) No brokerage fees, no commissions, no subscription fees, and no other charges were paid by the Plan or by the Accounts with respect to the acquisition and holding of the Rights, and no commissions, no fees, and no expenses were paid by the Plan or by the Accounts of Invested Participants to any related broker in connection with the sale or exercise of any of the Rights, or with regard to the acquisition of Common Stock through the exercise of such Rights;

(h) EXCO did not influence any Invested Participant's election with respect to the Rights; and

(i) The terms of the Offering were described to the Invested Participants in clearly written communications, including, but not limited to, the prospectus for the Rights Offering.

**Notice to Interested Persons**

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include all of the Invested Participants whose Accounts were invested in shares of Common Stock on the Record Date and received the Rights pursuant to the Offering.

It is represented that all such interested persons will be notified of the publication of the Notice by first class mail, to each such interested person's last known address within fifteen (15) days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(a)(2), which will advise all interested persons of their right to comment and to request a hearing. All written comments and/or requests for a hearing must be received by the Department from interested persons within forty-five (45) days of the publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, social security number, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 23rd day of December 2014.

**Lyssa E. Hall,**

*Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 2014–30526 Filed 12–29–14; 8:45 am]

**BILLING CODE 4510–29–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

### Comment Request for Information Collection for Trade Adjustment Assistance Community College and Career Training (TAACCCT) Grant Program Reporting Requirements (Routine Extension With a Minor Revision to one Definition to Increase Clarity)

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)] (PRA). The PRA helps ensure that respondents can provide requested data in the desired format with minimal reporting burden (time and financial resources), collection instruments are clearly understood and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the information collection request (ICR) to collect data about the TAACCCT Grant Program Reporting Requirements (expires March 31, 2015).

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. To help ensure appropriate consideration, comments should mention this grant program (OMB Control No. 1205–0489).

**DATES:** Submit written comments to the office listed in the addresses section below on or before March 2, 2015.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Kristen Milstead, Division of Strategic Investments, Room C4518, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3949 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–3890. Email: *taaccct@dol.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

ETA requires grantees to submit Quarterly Progress Reports with a narrative summary of at least two progress measures and at least two implementation measures identified by the grantee in their project work plan. Every fourth quarter, grantees submit an Annual Performance Report with standardized outcome measures that will include aggregate data for program participants for the following ten outcome measures: unique participants served/enrolled; total number of participants who have completed a grant-funded program of study; total number still retained in their programs of study; total number retained in other education programs; total number of credit hours completed; total number of

earned credentials; total number pursuing further education after program of study completion; total number employed after program of study completion; total number retained in employment after program of study completion; and the total number of those employed at enrollment who receive a wage increase post-enrollment.

These reports help ETA gauge the effects of the TAACCCT grants, identify grantees that could serve as useful models, and target technical assistance appropriately.

**II. Review Focus**

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

**III. Current Actions**

- *Agency:* DOL–ETA.
- *Type of Review:* Extension
- *Title of Collection:* Trade Adjustment Assistance Community College and Career Training (TAACCCT) Grant Program Reporting Requirements
- *Forms:* ETA 9159 and 9160.
- *OMB Control Number:* 1205–0489.
- *Affected Public:* Private sector, not for profit
- *Estimated Number of Respondents:* 256 grantees
- *Frequency:* quarterly
- *Total Estimated Annual Responses:* 848,032 responses
- *Estimated Total Annual Burden Hours:* 64,890 hours
- *Total Estimated Annual Other Cost Burden:* $0.

We will summarize and/or include in the request for OMB approval of the ICR, the comments received in response to this comment request; they will also become a matter of public record.

**Portia Wu,**

*Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2014–30311 Filed 12–29–14; 8:45 am]

BILLING CODE 4510–FN–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–85,574]**

### Verso Paper Corporation, Bucksport Mill Division, Including On-Site Leased Workers From Imerys and Elite Staffing Including Workers Whose Unemployment Insurance (UI) Wages Are Reported Through Verso Paper, LLC Bucksport, Maine; 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 November 12, 2014, applicable to workers of Verso Paper Corporation, Bucksport Mill Division, including workers whose unemployment insurance (UI) wages are reported through Verso Paper, LLC, Bucksport, Maine.

At the request of a state workforce official, the Department reviewed the certification for workers of the subject firm. The workers were engaged in activities related to the production of coated, uncoated mechanical and specialty paper.

The company reports that workers leased from Imerys and Elite Staffing were on-site at the Bucksport, Maine location of Verso Paper Corporation. 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 Imerys and Elite Staffing working on-site at the Bucksport, Maine location of Verso Paper Corporation, Bucksport Mill Division.

The amended notice applicable to TA–W–85,574 is hereby issued as follows:

All workers of Imerys and Elite Staffing, reporting to Verso Paper Corporation, Bucksport Mill Division, including workers whose unemployment insurance (UI) wages are reported through Verso Paper, LLC, Bucksport, Maine, who became totally or partially separated from employment on or after January 7, 2014 through November 12, 2016, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 16th day of December, 2014.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2014–30507 Filed 12–29–14; 8:45 am]

BILLING CODE 4510–FN–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,492]**

### Creation Technologies Kentucky, Inc. Including On-Site Leased Workers From Manpower, Kelly Services, and Nesco Lexington, Kentucky; 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 3, 2013, applicable to workers of Creation Technologies Kentucky, Inc., including on-site leased workers from Manpower and Kelly Services, Lexington, Kentucky. The Department's notice of determination was published in the **Federal Register** on April 30, 2013 (78 FR 25306).

At the request of the State Workforce Office, the Department reviewed the certification for workers of the subject firm. The workers were engaged in production of electronic products.

The company reports that workers leased from NESCO were employed on-site at Creation Technologies Kentucky, Inc., Lexington, Kentucky. 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 NESCO working on-site at the Lexington, Kentucky location of Creation Technologies Kentucky, Inc.

The amended notice applicable to TA–W–82,492 is hereby issued as follows:

All workers of NESCO, reporting to Creation Technologies Kentucky, Inc.,

Lexington, Kentucky, who became totally or partially separated from employment on or after February 21, 2012 through April 3, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through April 3, 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 16th day of December 2014.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2014–30506 Filed 12–29–14; 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 January 9, 2015.

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 January 9, 2015.

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.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

APPENDIX

[22 TAA petitions instituted between 12/8/14 and 12/12/14]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 85697 | Allegany Technologies, The South Plant Operations (State/One-Stop). | Albany, OR | 12/08/14 | 12/05/14 |
| 85698 | General Motors Corporation (State/One-Stop) | Lansing, MI | 12/08/14 | 12/05/14 |
| 85699 | Fisher & Paykel Laundry Manufacturing, Inc. (Company) | Clyde, OH | 12/08/14 | 12/05/14 |
| 85700 | Sport Mart Inc. (Workers) | Charleston, WV | 12/08/14 | 12/05/14 |
| 85701 | Grammer Inc. (Company) | Hudson, WI | 12/08/14 | 12/04/14 |
| 85702 | JP Morgan Chase & Co (Workers) | Lowell, MA | 12/08/14 | 11/05/14 |
| 85703 | CareFusion Resources, LLC (Company) | Englewood, CO | 12/09/14 | 12/08/14 |
| 85704 | Performance Fibers (Company) | New Hill, NC | 12/09/14 | 12/08/14 |
| 85705 | Key Bank, NA (Workers) | Brooklyn, OH | 12/09/14 | 12/07/14 |
| 85706 | Quality Auto Electric, Inc. (State/One-Stop) | Knoxville, TN | 12/10/14 | 12/09/14 |
| 85707 | Covidien (Company) | Seneca, SC | 12/10/14 | 12/09/14 |
| 85708 | Luck-E-Strike (State/One-Stop) | Cassville, MO | 12/10/14 | 12/09/14 |
| 85709 | Brammo Inc. (State/One-Stop) | Talent, OR | 12/11/14 | 12/10/14 |
| 85710 | Hugo Boss Cleveland Inc (Union) | Brooklyn, OH | 12/11/14 | 12/10/14 |
| 85711 | GE Appliances and Lighting (State/One-Stop) | Dekalb, IL | 12/11/14 | 12/10/14 |
| 85712 | Turbomeca Manufacturing, LLC (Company) | Monroe, NC | 12/11/14 | 12/10/14 |
| 85713 | Surgical Specialties Corporation (State/One-Stop) | Reading, PA | 12/11/14 | 12/10/14 |
| 85714 | Superior Industries International (State/One-Stop) | Fayetteville, AR | 12/11/14 | 12/10/14 |
| 85715 | Vermont Circuits, Inc. (State/One-Stop) | Brattleboro, VT | 12/12/14 | 12/11/14 |
| 85716 | Flextronics (State/One-Stop) | West Chester, PA | 12/12/14 | 12/11/14 |
| 85717 | Green Diamond Resource Company (Union) | Korbel, CA | 12/12/14 | 12/09/14 |
| 85718 | Osram Sylvania (State/One-Stop) | Danvers, MA | 12/12/14 | 12/10/14 |

[FR Doc. 2014–30510 Filed 12–29–14; 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 and Alternative Trade 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 (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *December 8, 2014 through December 12, 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. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected 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(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.,* conditions within the industry are adverse).

**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.

*None.*

**Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade 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) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

*85,546, Boston Scientific Corporation, San Clemente, California. September 22, 2013.*

*85,600, Novartis Pharmaceuticals Corporation, Suffern, New York. October 15, 2013.*

*85,623, Republic Steel, Canton, Ohio. October 31, 2013.*

*85,641, Regal Beloit Corporation, Springfield, Missouri. November 10, 2013.*

*85,643, Oak-Mitsui Technologies, LLC, Hoosick Falls, New York. November 12, 2013.*

*85,646, Albea Thomaston, Inc. Thomaston, Connecticut. November 14, 2013.*

*85,648, DynaVox Systems, LLC, Pittsburgh, Pennsylvania. November 14, 2013.*

*85,652, Essilor Industries, Ponce, Puerto Rico. November 17, 2013.*

*85,662, Leonard & Harral Packing Company, Inc., San Antonio, Texas. November 14, 2013.*

*85,663, ITT Corporation—Interconnect Solutions, Santa Ana, California. October 18, 2014.*

*85,664, Mondi Bags USA, LLC, New Philadelphia, Ohio. November 13, 2013.*

*85,667, JDS Uniphase, Milpitas, California. June 27, 2014.*

*85,667A, Leased Workers From OPSEC Security, Milpitas, California. November 24, 2013.*

*85,683, Hamilton Sundstrand, Pratt & Whitney, San Diego, California. May 23, 2014.*

**Negative Determinations for Alternative Trade Adjustment Assistance**

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

*None.*

**Negative Determinations for Worker Adjustment Assistance and Alternative Trade 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.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

*85,556, Honeywell, Tempe, Arizona.*

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*85,677, Hitachi Zosen Catalyst USA, LLC, Scottsboro, Alabama.*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*83,367, Pixel Playground, Inc., Woodland Hills, California.*
*85,595, Quad/Graphics, Woodstock, Illinois.*
*85,613, Midair, USA Inc., Rome, New York.*
*85,619, Oracle America, Inc., Morrisville, North Carolina.*
*85,633, Microsoft, Calabasas, California.*

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

*85,675, Hewlett Packard Company, Corvallis, Oregon.*
*85,690, Apex Tool Group, LLC., Garland, Texas.*

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

*85,673, Quantum Foods, Bolingbrook, Illinois.*
*85,681, Atmel Corporation, Colorado Springs, Colorado.*
*85,692, Honeywell, Canton, Massachusetts.*

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

*85,658, SMC Electrical Products, Inc., Delta, Colorado.*

I hereby certify that the aforementioned determinations were issued during the period of *December 8, 2014 through December 12, 2014.* These determinations are available on the Department's Web site *www.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 22nd day of December 2014.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2014–30512 Filed 12–29–14; 8:45 am]

BILLING CODE 4510–FN–P

## NATIONAL SCIENCE FOUNDATION

### Notice and Request for Comments on the National Science Foundation (NSF) Implementation of Proposed NSF Management Fee Policy

**AGENCY:** National Science Foundation.

**ACTION:** Notice and Request for Comments on the National Science Foundation (NSF) Implementation of Proposed NSF Management Fee Policy.

**SUMMARY:** The payment of a small but appropriate management fee has been a long standing practice at the National Science Foundation (NSF) in limited circumstances related to the construction and operation of major facility projects. NSF is strengthening both the criteria used to establish such management fees and the controls that may be necessary to ensure that uses of fees are consistent with those established criteria. These efforts have resulted in a revised policy that we are providing here for public comment.

**DATES:** Comments on the proposed NSF Management Fee are welcome before February 13, 2015. Comments will be useful in shaping the agency's implementation. All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included. Because they will be made public, comments should not include any sensitive information. Please send written comments regarding the management fee policy to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 1265, Arlington, VA 22230, or by email to *splimpto@nsf.gov*.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Plimpton on (703) 292–7556 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).

**SUPPLEMENTARY INFORMATION:** The following proposed NSF Management Fee Policy can be found in the NSF Large Facilities Manual:

Section 4.2.2.2 *Management Fee*

Management fee is an amount of money paid to a recipient in excess of a cooperative agreement's or cooperative support agreement's allowable costs. Generally, NSF does not pay profit or fee to organizations under financial assistance, except for the specific exception of profits to commercial organizations performing Small Business Innovation Research (SBIR) or Small Business Technology Transfer (SBTR) work. However, a management fee may be authorized for awards to non-profit organizations in the limited circumstance of construction or operation of a large facility under an NSF assistance award when the organization has limited or no other financial resources to cover certain ordinary and necessary business expenses that may not be reimbursable under the governing cost principles. When requested and justified by an awardee and subsequently authorized by NSF, management fee will be paid once negotiated by the NSF Grants and Agreements Officer. Any amount negotiated shall be expressly set forth in the terms and conditions of the award.

NSF recognizes the following criteria for the negotiation and award of management fee:

- Working capital necessary to fund operations under an award
- Facilities capital necessary to acquire assets for performance
- Amounts for other expenses that are ordinary and necessary for business operations but that are not otherwise reimbursable under the governing cost principles

Amounts for working capital may be necessary to ensure a level of retained earnings available to the organization in order to secure credit and borrowing to assure the financial health of the organization. An amount for facilities capital may be necessary to allow the organization to acquire major assets and to address expenses that require immediate substantive financial outlays but that are only reimbursed through depreciation or amortization over a period of years. Amounts for other expenses that are ordinary and necessary but not otherwise reimbursable can provide a reasonable allowance for management initiative and investments that will directly or indirectly benefit NSF. Examples of potential appropriate needs include contract terminations and losses, certain appropriate educational and public outreach activities, and providing financial incentives to obtain and retain high caliber staff. Amounts for this

criterion warrant careful consideration of the benefits that may be obtained by NSF when providing management fee. Although not an exhaustive list, the following are examples of expenses that do not benefit NSF:

- Alcoholic beverages
- Tickets to concerts, sporting and other events
- Vacation or other travel for non-business purposes
- Charitable contributions
- Social or sporting club memberships
- Meals for non-business purposes or so extravagant as to constitute entertainment
- Luxury or personal items
- Lobbying as set forth in the Uniform Guidance at 2 CFR 200.450

Costs that are otherwise reimbursable as described in the Uniform Guidance at Subpart E should not be included as part of the management fee negotiation.

The fee proposal must provide sufficient visibility into each criterion to identify its intended purpose. The proposal must also include a schedule of all federal, non-federal, and other sources of income to justify that alternate sources of income are not available to address potential needs covered in the proposal. Agreement on management fee amounts shall be completed and a sum certain established prior to the initiation of work under an award or any subsequent period not authorized as part of the initial award. Recipients may draw down management fee in proportion to costs incurred during the performance period. Fee established for a period longer than one year shall be subject to adjustment in the event of a significant change to the budget or work scope.

Even though management fee represents an amount in excess of cost and therefore not subject to application of the cost principles set forth at 2 CFR part 200, subpart E, NSF maintains a strong interest in how those monies are used. Information on actual uses of management fee previously awarded by NSF in the preceding five-year period under any award shall be included in the proposing organization's fee proposal. For incumbent awardees, fee proposals submitted in response to a NSF program solicitation shall include information regarding their management fee usage under the preceding award(s). NSF will examine the extent to which awardee fee proposals have proven reliable when compared with actual uses of management fee. NSF will also perform periodic reviews of management fee usage under an award. Repeated, unexplained failure to reasonably adhere to planned uses of fee will result in reduction of future management fee amounts under the award.

Dated: December 19, 2014.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2014–30244 Filed 12–29–14; 8:45 am]

**BILLING CODE 7555–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 52–024; NRC–2008–0233]**

## Entergy Operations, Inc.; Combined License Application for Grand Gulf Station Unit 3 Exemption

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an October 16, 2014, letter from Entergy Operations, Inc. (EOI) which requested an exemption to suspend maintaining the Departures Report and the design control document (DCD) Update Report until December 31, 2015, or coincident with resuming the review of the for Grand Gulf Nuclear Station (GGNS) Combined License (COL) application, whichever comes first. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption.

**ADDRESSES:** Please refer to Docket ID NRC–2008-0233 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–2008-0233. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Lynnea Wilkins, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1377; email: *Lynnea.Wilkins@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The following sections include the text of the exemption in its entirety as issued to EOI.

### I. Background

The NRC accepted for docketing the Grand Gulf Nuclear Station Unit 3 (GGNS3) COL application on April 17, 2008 (ADAMS Accession No. ML081050460, Docket No. 52–024). On January 9, 2009, EOI requested that the NRC temporarily suspend review of the application and the NRC granted EOI's request (ADAMS Accession No. ML090080523) while the application remained docketed. On October 16, 2014, (ADAMS Accession No. ML14289A520), EOI requested an exemption from the requirements of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b until December 31, 2015 or coincident with resuming the review of the for RBS3 COL application, whichever comes first.

### II. Request/Action

10 CFR part 52, Appendix E, Paragraph X.A.1 requires that the applicant for this appendix shall maintain a copy of the generic DCD [design control document] that includes all generic changes it makes to Tier 1 and Tier 2, and the generic TS and other operational requirements. The applicant shall maintain sensitive unclassified non-safeguards information (including proprietary information and security-related information) and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

10 CFR part 52, Appendix E, Paragraph X.A.2 requires that an applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under Section VIII of this appendix throughout

the period of application and for the term of the license (including any period of renewal).

10 CFR part 52, Appendix E, Paragraph X.B.3.b requires that during the interval from the date of application for a license to the date the Commissions makes its findings required by 10 CFR 52.103(g), the [Departures] report must be submitted semiannually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

By letter dated January 9, 2009, EOI requested that the NRC suspend review of the GGNS COL application. The NRC granted EOI's request for suspension of all review activities while the application remained docketed. In a letter dated, October 16, 2014, EOI requested an exemption from the requirements of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b until December 31, 2015 or coincident with resuming the review of the for GGNS COL application, whichever comes first.

EOI's requested exemption is seen as a schedule change from the requirements of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b. The exemption would allow EOI to suspend maintaining the Departures Report and the DCD Update Report and forego submitting these reports until December 31, 2015, or coincident with resuming the review of the GGNS COL application, whichever comes first.

## III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, including 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b when: (1) The exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: ''application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)); ''compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated (10 CFR 50.12(a)(2)(iii)) or; ''the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

The purposes of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b are to maintain reports pertaining to the ESBWR and plant-specific DCDs associated with a COL application current and to provide timely, current, comprehensive reports and updates in order to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report.

Because EOI requested the NRC to suspend its review of the GGNS COL application, the Departures Report and DCD Update, if provided, would not be reviewed by the NRC. Therefore, compelling EOI to provide Departures Report and DCD Update would result in an unnecessary burden and hardship for the applicant. For this reason the application of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b can be deemed unnecessary and therefore, special circumstances are present.

*Authorized by Law*

The exemption is a temporary exemption from the requirements of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b. The exemption would allow EOI to suspend maintaining the Departures Report and the DCD Update Report and forego submitting these reports until December 31, 2015, or coincident with resuming the review of the GGNS COL application, whichever comes first. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 52. The NRC staff has determined that granting EOI the requested exemption from the requirements of 10 CFR part 50, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b will be only temporary, and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

*No Undue Risk to Public Health and Safety*

The underlying purposes of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b are to maintain reports pertaining to the ESBWR and plant-specific DCDs associated with a COL application current and to provide timely, current, comprehensive reports and updates in order to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report. The requested exemption is administrative in nature in that it pertains to activities for which a license has not been granted; hence, there are no safety implications. Specifically, there are no new health or safety issues created and no increase in the probability of postulated accidents or their consequences associated with this exemption request. Therefore, there is no undue risk to public health and safety.

*Consistent With Common Defense and Security*

The exemption would allow EOI to suspend maintaining the Departures Report and the DCD Update Report and forego submitting these reports until December 31, 2015 or coincident with resuming the review of the GGNS COL application, whichever comes first. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

*Special Circumstances*

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever ''application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)); compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated (10 CFR 50.12(a)(2)(iii)) or; ''the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)). The underlying purposes of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b are to maintain reports pertaining to the ESBWR and plant-specific DCDs associated with a COL application current and to provide timely, current, comprehensive reports and updates in order to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report.

Because the requirement to maintain reports pertaining to the ESBWR and plant-specific DCDs associated with a COL application was intended for active reviews and the RBS3 COL application review is now suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption EOI would then be required

to comply by the earlier of a restart or the review or December 31, 2015, and the purpose of the rule would still be achieved. Additionally, because EOI requested the NRC to suspend its review of the GGNS COL application, the Departures Report and DCD Update, if provided, would not be reviewed by the NRC. Therefore, compelling EOI to provide Departures Report and DCD Update would result in an unnecessary burden and hardship for the applicant.

In addition, the exemption is a temporary exemption from the requirements of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b. EOI has made good faith efforts to comply with the regulation. The exemption would allow EOI to suspend maintaining the Departures Report and the DCD Update Report and forego submitting these reports until December 31, 2015, or coincident with resuming the review of the GGNS COL application, whichever comes first.

Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii), (iii), and (v) for the granting of an exemption from 10 CFR part 50, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b exist.

*Eligibility for Categorical Exclusion From Environmental Review*

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) and justified by the NRC staff as discussed below.

10 CFR 51.22(c)(25)(i): The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92(c)(1)–(3). The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. There are no significant hazards considerations because granting the proposed exemption would not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated or involve a significant reduction in a margin of safety.

10 CFR 51.22(c)(25)(ii): The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

10 CFR 51.22(c)(25)(iii): Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

10 CFR 51.22(c)(25)(iv): The proposed action involves only a schedule change which is administrative in nature; the COL application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

10 CFR 51.22(c)(25)(v): The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of radiological accidents.

10 CFR 51.22(c)(25)(vi)(B) and (G): The exemption request involves submitting an updated COL application by EOI and relates to the schedule for submitting a COL application update to the NRC.

## IV. Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1) and (2), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also special circumstances as described in 10 CFR 50.12(a)(2)(ii), (iii), and (v) are present. Therefore, the Commission hereby grants EOI the exemption from the requirements of 10 CFR part 50, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b pertaining to the Grand Gulf Nuclear Station COL application to allow submittal of the Departures Report and the DCD Update Report the earlier of any request to the NRC to resume the review or by December 31, 2015.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment. This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 22nd day of December 2014.

For the Nuclear Regulatory Commission.

**Perry Buckberg,**

*Acting Branch Chief, Licensing Branch 3, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2014–30581 Filed 12–29–14; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 52–036; NRC–2008–0616]**

## Entergy Operations, Inc.; Combined License Application for River Bend Station Unit 3 Exemption

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an October 16, 2014, letter from Entergy Operations, Inc. (EOI) which requested an exemption to suspend maintaining the Departures Report and the design control document (DCD) Update Report until December 31, 2015, or coincident with resuming the review of the for River Bend Station Unit 3 (RBS3) Combined License (COL) application, whichever comes first. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption.

**ADDRESSES:** Please refer to Docket ID NRC–2008–0616 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–2008–0616. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Lynnea Wilkins, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5136; email: *Lynnea.Wilkins@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The following sections include the text of the exemption in its entirety as issued to EOI.

## I. Background

The NRC accepted for docketing the River Bend Station Unit 3 (RBS3) COL application on December 4, 2008 (ADAMS Accession No. ML083370275, Docket No. 52–036). On January 9, 2009, EOI requested that the NRC temporarily suspend review of the application and the NRC granted EOI's request (ADAMS Accession No. ML090080277) while the application remained docketed. On October 16, 2014, (ADAMS Accession No. ML14289A521), EOI requested an exemption from the requirements of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b until December 31, 2015, or coincident with resuming the review of the for RBS3 COL application, whichever comes first.

## II. Request/Action

10 CFR part 52, Appendix E, Paragraph X.A.1 requires that the applicant for this appendix shall maintain a copy of the generic DCD [design control document] that includes all generic changes it makes to Tier 1 and Tier 2, and the generic TS and other operational requirements. The applicant shall maintain sensitive unclassified non-safeguards information (including proprietary information and security-related information) and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

10 CFR part 52, Appendix E, Paragraph X.A.2 requires that an applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

10 CFR part 52, Appendix E, Paragraph X.B.3.b requires that during the interval from the date of application for a license to the date the Commissions makes its findings required by 10 CFR 52.103(g), the [Departures] report must be submitted semiannually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

By letter dated January 9, 2009, EOI requested that the NRC suspend review of the RBS3 COL application. The NRC granted EOI's request for suspension of all review activities while the application remained docketed. In a letter dated, October 16, 2014, EOI requested an exemption from the requirements of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b until December 31, 2015 or coincident with resuming the review of the for RBS3 COL application, whichever comes first.

EOI's requested exemption is seen as a schedule change from the requirements of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b. The exemption would allow EOI to suspend maintaining the Departures Report and the DCD Update Report and forego submitting these reports until December 31, 2015, or coincident with resuming the review of the RBS3 COL application, whichever comes first.

## III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, including 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b, when: (1) The exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)); ''compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated'' (10 CFR 50.12(a)(2)(iii)) or; ''the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

The purposes of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b are to maintain reports pertaining to the ESBWR and plant-specific DCDs associated with a COL application current and to provide timely, current, comprehensive reports and updates in order to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report.

Because EOI requested the NRC to suspend its review of the RBS3 COL application, the Departures Report and DCD Update, if provided, would not be reviewed by the NRC. Therefore, compelling EOI to provide Departures Report and DCD Update would result in an unnecessary burden and hardship for the applicant. For this reason the application of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b can be deemed unnecessary and therefore, special circumstances are present.

### *Authorized by Law*

The exemption is a temporary exemption from the requirements of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b. The exemption would allow EOI to suspend maintaining the Departures Report and the DCD Update Report and forego submitting these reports until December 31, 2015, or coincident with resuming the review of the RBS3 COL application, whichever comes first. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 52. The NRC staff has determined that granting EOI the requested exemption from the requirements of 10 CFR part 50, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b will be only temporary, and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

### *No Undue Risk to Public Health and Safety*

The underlying purposes of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b are to maintain reports pertaining to the ESBWR and plant-specific DCDs associated with a COL application current and to provide timely, current, comprehensive reports and updates in order to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report. The requested exemption is administrative in nature in that it pertains to activities for which a license has not been granted; hence, there are no safety implications. Specifically, there are no new health or safety issues created and no increase in the probability of postulated accidents or their consequences associated with this exemption request. Therefore, there is no undue risk to public health and safety.

*Consistent With Common Defense and Security*

The exemption would allow EOI to suspend maintaining the Departures Report and the DCD Update Report and forego submitting these reports until December 31, 2015, or coincident with resuming the review of the RBS3 COL application, whichever comes first. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

*Special Circumstances*

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever ''application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)); compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated (10 CFR 50.12(a)(2)(iii)) or; ''the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)). The underlying purposes of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b are to maintain reports pertaining to the ESBWR and plant-specific DCDs associated with a COL application current and to provide timely, current, comprehensive reports and updates in order to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report.

Because the requirement to maintain reports pertaining to the ESBWR and plant-specific DCDs associated with a COL application was intended for active reviews and the RBS3 COL application review is now suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption EOI would then be required to comply by the earlier of a restart or the review or December 31, 2015, and the purpose of the rule would still be achieved. Additionally, because EOI requested the NRC to suspend its review of the GGNS COL application, the Departures Report and DCD Update, if provided, would not be reviewed by the NRC. Therefore, compelling EOI to provide Departures Report and DCD Update would result in an unnecessary burden and hardship for the applicant.

In addition, the exemption is a temporary exemption from the requirements of 10 CFR part 52, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b. EOI has made good faith efforts to comply with the regulation. The exemption would allow EOI to suspend maintaining the Departures Report and the DCD Update Report and forego submitting these reports until December 31, 2015, or coincident with resuming the review of the GGNS COL application, whichever comes first.

Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii), (iii), and (v) for the granting of an exemption from 10 CFR part 50, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b exist.

*Eligibility for Categorical Exclusion From Environmental Review*

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) and justified by the NRC staff as discussed below.

10 CFR 51.22(c)(25)(i): The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92(c)(1)–(3) . The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. There are no significant hazards considerations because granting the proposed exemption would not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated or involve a significant reduction in a margin of safety.

10 CFR 51.22(c)(25)(ii): The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

10 CFR 51.22(c)(25)(iii): Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

10 CFR 51.22(c)(25)(iv): The proposed action involves only a schedule change which is administrative in nature; the COL application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

10 CFR 51.22(c)(25)(v): The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of radiological accidents.

10 CFR 51.22(c)(25)(vi)(B) and (G): The exemption request involves submitting an updated COL application by EOI and relates to the schedule for submitting a COL application update to the NRC.

## IV. Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1) and (2), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also special circumstances as described in 10 CFR 50.12(a)(2)(ii), (iii), and (v) are present. Therefore, the Commission hereby grants EOI the exemption from the requirements of 10 CFR part 50, Appendix E, Paragraphs X.A.1, X.A.2, and X.B.3.b pertaining to the River Bend Station Unit 3 COL application to allow submittal of the Departures Report and the DCD Update Report the earlier of any request to the NRC to resume the review or by December 31, 2015.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 22nd day of December 2014.

For the Nuclear Regulatory Commission.

**Perry Buckberg,**

*Acting Branch Chief, Licensing Branch 3, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2014–30585 Filed 12–29–14; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[NRC–2014–0263]**

## Unified Agenda of Federal Regulatory and Deregulatory Actions; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Semiannual regulatory agenda; correction.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** (FR) on December 22, 2014, regarding the semiannual regulatory agenda. This action is necessary to correct the Docket ID.

**DATES:** The correction is effective December 30, 2014.

**ADDRESSES:** Please refer to Docket ID NRC–2014–0263 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0263. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Cindy Bladey, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–287–0949; email: *Cindy.Bladey@nrc.gov.* Persons outside the Washington, DC, metropolitan area may call, toll-free: 1–800–368–5642. For further information on the substantive content of any rule listed in the Agenda, contact the individual listed under the heading ''Agency Contact'' for that rule.

**SUPPLEMENTARY INFORMATION:** In the FR on December 22, 2014, in FR Doc. 2014–28992 on page 76856, in the heading; the first column, third paragraph; and second column, second, third, and sixth paragraphs, correct NRC–2014–0039 to read NRC–2014–0263.

Dated at Rockville, Maryland this 22nd day of December 2014.

For the Nuclear Regulatory Commission.

**Helen Chang,**

*Acting Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 2014–30593 Filed 12–29–14; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2015–21 and CP2015–26; Order No. 2297]**

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Express Contract 24 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 29, 2014.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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### I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Express Contract 24 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

### II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–21 and CP2015–26 to consider the Request pertaining to the proposed Priority Mail Express Contract 24 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 29, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis Kidd to serve as Public Representative in these dockets.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2015–21 and CP2015–26 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Curtis Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).
3. Comments are due no later than December 29, 2014.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2014–30228 Filed 12–29–14; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. CP2015–27; Order No. 2298]**

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning

[1] Request of the United States Postal Service to Add Priority Mail Express Contract 24 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 18, 2014 (Request).

an additional Global Reseller Expedited Package Contracts 1 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 29, 2014.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

### I. Introduction

On December 18, 2014, the Postal Service filed notice that it has entered into an additional Global Reseller Expedited Package Contracts 1 (GREP 1) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

### II. Notice of Commission Action

The Commission establishes Docket No. CP2015–27 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 29, 2014. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in this docket.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. CP2015–27 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than December 29, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2014–30233 Filed 12–29–14; 8:45 am]

**BILLING CODE 7710–FW–P**

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 1 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, December 18, 2014 (Notice).

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## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2015–20 and CP2015–25; Order No. 2300]**

## New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 105 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps. The Commission has issued an Errata to the Notice, correcting the comment due date to December 31, 2014. That change is reflected in this document.

**DATES:** *Comments are due:* December 31, 2014.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

### I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 105 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

### II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–20 and CP2015–25 to consider the Request pertaining to the proposed Priority Mail Contract 105 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642; 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 31, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2015–20 and CP2015–25 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than December 31, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2014–30360 Filed 12–29–14; 8:45 am]

**BILLING CODE 7710–FW–P**

[1] Request of the United States Postal Service to Add Priority Mail Contract 105 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 18, 2014 (Request).

## POSTAL SERVICE

### Product Change—Priority Mail Express Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* December 30, 2014.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 22, 2014, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express Contract 25 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–22, CP2015–28.

**Stanley F. Mires,**

*Attorney, Federal Requirements.*

[FR Doc. 2014–30425 Filed 12–29–14; 8:45 am]

BILLING CODE 7710–12–P

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review, Request for Comments

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is an forwarding Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

*1. Title and purpose of information collection:* Railroad Service and Compensation Reports/System Access Application; OMB 3220–0008.

Under Section 9 of the Railroad Retirement Act (RRA) and Section 6 of the Railroad Unemployment Insurance Act (RUIA) the Railroad Retirement Board (RRB) maintains for each railroad employee, a record of compensation paid to that employee by all railroad employers for whom the employee worked after 1936. This record, which is used by the RRB to determine eligibility for, and amount of, benefits due under the laws it administers, is conclusive as to the amount of compensation paid to an employee during such period(s) covered by the report(s) of the compensation by the employee's railroad employer(s), except in cases when an employee files a protest pertaining to his or her reported compensation within the statute of limitations cited in Section 9 of the RRA and Section 6 of the RUIA.

To enable the RRB to establish and maintain the record of compensation, employers are required to file with the RRB, reports of their employees' compensation, in such manner and form and at such times as the RRB prescribes. Railroad employers' reports and responsibilities are prescribed in 20 CFR 209. The RRB currently utilizes Form BA–3, *Annual Report of Creditable Compensation,* and Form BA–4, *Report of Creditable Compensation Adjustments,* to secure the required information from railroad employers. Form BA–3 provides the RRB with information regarding annual creditable service and compensation for each individual who worked for a railroad employer covered by the RRA and RUIA in a given year. Form BA–4 provides for the adjustment of any previously submitted reports and also the opportunity to provide any service and compensation that had been previously omitted. Requirements specific to Forms BA–3 and BA–4 are prescribed in 20 CFR 209.8 and 209.9.

Employers currently have the option of submitting BA–3 and BA–4 reports electronically by CD–ROM, File Transfer Protocol (FTP), secure Email, or online via the RRB's Employer Reporting System (ERS).

The information collection also includes RRB Form BA–12, Application for Employer Reporting Internet Access, and Form G–440, Report Specifications Sheet. Form BA–12 is completed by railroad employers to obtain system access to ERS. Once access is obtained, authorized employees may submit reporting forms online to the RRB. The form determines what degree of access (view/only, data entry/modification or approval/submission) is appropriate for that employee. It is also used to terminate an employee's access to ERS. Form G–440, Report Specifications Sheet, serves as a certification document for various RRB employer reporting forms (Form BA–3, Form BA–4, Form BA–6a, BA–6, Address Report (OMB 3220–0005), Form BA–9, Report of Separation Allowance or Severance Pay (OMB 3220–0173) and Form BA–11, Report of Gross Earnings (OMB 3220–0132)). It records the type of medium the report was submitted on, and serves as a summary recapitulation sheet for reports filed on paper.

*Previous Requests for Comments:* The RRB has already published the initial 60-day notice (79 FR 63652 on October 24, 2014) required by 44 U.S.C. 3506(c)(2). On November 25, 2014, the RRB received comments from the Department of Commerce's Bureau of Economic Analysis (BEA), strongly supporting the RRB's continued collection of the data on Forms BA–3 and BA–4 stating ''these forms are our main data source for key components of BEA's economic statistics.''

**Information Collection Request (ICR)**

*Title:* Railroad Service and Compensation Reports/System Access Application.

*OMB Control Number:* 3220–0008.

*Form(s) submitted:* BA–3, BA–3 (Internet), BA–4, BA–4 (Internet), BA–12 and G–440.

*Type of request:* Revision of a currently approved collection.

*Affected public:* Private Sector; Businesses or other for-profits.

*Abstract:* Under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, employers are required to report service and compensation for each employee to update Railroad Retirement Board records for payments of benefits. The collection obtains service and compensation information and information needed to ensure secure system access from employers who voluntarily opt to use the RRB's Internet-based Employer Reporting System to submit reporting forms and information needed to certify employer reporting transactions.

*Changes proposed:* The RRB proposes to eliminate the paper version of Form BA–3 and to make minor non-burden impacting changes to Forms BA–12.

*The burden estimate for the ICR is as follows:*

| Reporting | Responses | Time (minutes) | Burden (hours) |
|---|---|---|---|
| BA–3: | | | |
| Electronic Media | 96 | 46.25 (2,775 min) | 4,440 |
| BA–3 (Internet) | 617 | 46.25 (2,775 min) | 28,536 |
| Total BA–3 | 713 | | 32,976 |
| BA–4: | | | |
| Paper | 160 | 1.25 (75 min) | 200 |
| Electronic Media | 285 | 1.00 (60 min) | 285 |
| BA–4 (Internet) | 3,852 | .33 (20 min) | 1,284 |
| Total BA–4 | 4,297 | | 1,769 |
| BA–12: | | | |
| Initial Access | 295 | .33 (20 min) | 98 |
| Access Termination | 38 | .166 (10 min) | 6 |
| Total BA–12 | 333 | | 105 |
| G–440 (Certification): | | | |
| Form BA–3 (zero employees) | 19 | .25 (15 min) | 5 |
| Form BA–11 (zero employees) | 60 | .25 (15 min) | 15 |
| Paper forms (without recap) | 7 | .25 (15 min) | 2 |
| Electronic transactions | 94 | .50 (30 min) | 47 |
| BA–3 and BA–4 (with recap) | 125 | 1.25 (75 min) | 156 |
| Total G–440 | 305 | | 224 |
| Grand Total | 5,648 | | 35,074 |

*2. Title and Purpose of information collection:* Medical Reports; OMB 3220–0038.

Under sections 2(a)(1)(iv) and 2(a)(1)(v) of the Railroad Retirement Act (RRA), annuities are payable to qualified railroad employees whose physical or mental condition makes them unable to (1) work in their regular occupation (occupational disability) or (2) work at all (permanent total disability). The requirements for establishing disability and proof of continuing disability under the RRA are prescribed in 20 CFR 220.

Under Sections 2(c)(1)(ii)(C) and 2(d)(1)(ii) of the RRA, annuities are also payable to qualified spouses and widow(er)s, respectively, who have a qualifying child who became disabled before age 22. Annuities are also payable to surviving children on the basis of disability under section 2(d)(1)(iii)(C) if the child's disability began before age 22 as well as to widow(er)s on the basis of disability under section 2(d)(1)(i)(B). To meet the disability standard, the RRA provides that individuals must have a permanent physical or mental condition that makes them unable to engage in any regular employment.

Under section 2(d)(1)(v) of the RRA, annuities are also payable to remarried widow(er)s and surviving divorced spouses on the basis of, among other things, disability or having a qualifying disabled child in care. However, the disability standard in these cases is that found in the Social Security Act. That is, individuals must be unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment. The RRB also determines entitlement to a Period of Disability and entitlement to early Medicare based on disability for qualified claimants in accordance with Section 216 of the Social Security Act.

When making disability determinations, the RRB needs evidence from acceptable medical sources. The RRB currently utilizes Forms G–3EMP, Report of Medical Condition by Employer; G–197, Authorization to Release Medical Information to the Railroad Retirement Board; G–250, Medical Assessment; G–250A, Medical Assessment of Residual Functional Capacity; G–260, Report of Seizure Disorder; RL–11B, Disclosure of Hospital Medical Records; RL–11D, Disclosure of Medical Records from a State Agency; and RL–250, Request for Medical Assessment, to obtain the necessary medical evidence. One response is requested of each respondent. Completion is voluntary.

*Previous Requests for Comments:* The RRB has already published the initial 60-day notice (79 FR 63653 on October 24, 2014) required by 44 U.S.C. 3506(c)(2).

**Information Collection Request (ICR)**

*Title:* Medical Reports.

*OMB Control Number:* 3220–0038.

*Form(s) submitted:* G–3EMP, G–197, G–250, G–250a, G–260, RL–11B, RL–11D, RL–250.

*Type of request:* Revision of a currently approved collection of information.

*Affected public:* Individuals or households; Private Sector; State, Local and Tribal Government.

*Abstract:* The Railroad Retirement Act provides disability annuities for qualified railroad employees whose physical or mental condition renders them incapable of working in their regular occupation (occupational disability) or any occupation (total disability). The medical reports obtain information needed for determining the nature and severity of the impairment.

*Changes proposed:* The RRB proposes to add a fraud statement; request a doctor's National Provider Number; and make other minor non-burden impacting editorial and cosmetic changes to Forms G–250, G–250A, and G–260. The RRB also proposes to revise Form G–197 to include authorization to disclose educational records from various sources, as well as make other minor non-burden impacting editorial changes. There are no proposed changes to Forms RL–11B, RL–11D, RL–250.

*The burden estimate for the ICR is as follows:*

| Form No. | Annual responses | Time (minutes) | Burden (hours) |
|---|---|---|---|
| G–3EMP | 600 | 10 | 100 |
| G–197 | 6,000 | 10 | 1,000 |
| G–250 | 11,950 | 30 | 5,975 |
| G–250A | 50 | 20 | 17 |
| G–260 | 100 | 25 | 42 |
| RL–11B | 5,000 | 10 | 833 |
| RL–11D | 250 | 10 | 42 |
| RL–250 | 11,950 | 10 | 1,992 |
| | 35,900 | | 10,001 |

*Additional Information or Comments:* Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV*.

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

**Charles Mierzwa,**

*Chief of Information Resources Management.*

[FR Doc. 2014–30497 Filed 12–29–14; 8:45 am]

**BILLING CODE 7905–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73911; File No. 10–214]**

## Automated Matching Systems Exchange, LLC; Notice of Filing of Amendment No. 1 to an Application for Limited Volume Exemption From Registration as a National Securities Exchange Under Section 5 of the Securities Exchange Act of 1934

December 22, 2014.

On July 7, 2014, Automated Matching Systems Exchange, LLC (''AMSE'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an application seeking a limited volume exemption under Section 5 of the Securities Exchange Act (''Exchange Act'') from registration as a national securities exchange under Section 6 of the Exchange Act.[1] Notice of AMSE's exemption application was published for comment in the **Federal Register** on July 29, 2014.[2] On October 23, 2014, the Commission issued an order instituting proceedings to determine whether to grant or deny AMSE's exemption application.[3] On November 10, 2014, AMSE submitted Amendment No. 1 to its exemption application. The Commission is publishing this notice in order to solicit views of interested persons on AMSE's exemption application as amended by Amendment No. 1.

### I. Description of AMSE's System

AMSE proposes to conduct business in reliance upon an exemption from registration as a national securities exchange pursuant to Section 5 of the Exchange Act.[4] In general, AMSE seeks to operate as an exchange for alternative trading systems.[5] AMSE proposes to operate solely on an ''off-order-book'' trading basis. AMSE does not intend to have a physical exchange trading floor, centralized order book, or specialists or market makers with affirmative and negative market making obligations. Each member of AMSE would maintain its own automated matching system or electronic order book. Each member of AMSE would adopt its own rules governing the execution and priority of orders on its system. Trades would occur when an order to buy and an order to sell match on a member's electronic order book. Each member would report its transactions to AMSE at such intervals as required by AMSE.

### II. Amendment No. 1 to AMSE's Exemption Application

On November 10, 2014, AMSE submitted Amendment No. 1 to its exemption application. AMSE has represented that the only substantive change to its exemption application made by Amendment No. 1 is the addition of the following paragraph to Exhibit E:[6]

> The Exchange will bring together orders for multiple buyers and sellers and such will be done by the use of consolidated quotation systems which effect transactions for multiple buyers and sellers. The consolidated quotation systems will display, or otherwise represent, trading interests entered on the AMSE system to its system users. AMSE may use a centralized order router which would match trading interests on the electronic order book of one member with the trading interests on the electronic order book of a second member.

### III. Additional Grounds for Denial Under Consideration

In the Order Instituting Proceedings, the Commission provided notice of the grounds for denial under consideration.[7] Specifically, the Commission noted that it was concerned that AMSE's exemption application does not meet a key threshold requirement for being granted an exemption from exchange registration—namely, that the applicant actually be an ''exchange'' as defined under Section 3(a)(1) of the Exchange Act and Rule 3b–16 thereunder.[8] The Commission continues to have this concern.

The Commission is providing notice of additional grounds for denial under consideration. Specifically, the Commission is concerned that it would not be necessary or appropriate in the public interest or for the protection of investors to grant a limited volume exemption under Section 5 of the Exchange Act because it appears from the exemption application that the operation of the proposed exchange would be inconsistent with the Exchange Act.

[1] The Commission notes that AMSE's application only seeks a limited volume exemption under Section 5 of the Exchange Act from registration as a national securities exchange under Section 6 of the Exchange Act. AMSE's application does not seek to register as a national securities exchange.

[2] *See* Securities Exchange Act Release No. 72661 (July 23, 2014), 79 FR 44070 (''Notice'').

[3] *See* Securities Exchange Act Release No. 73419 (October 23, 2014), 79 FR 64421 (October 29, 2014) (''Order Instituting Proceedings'').

[4] 15 U.S.C. 78e.

[5] For more detail on AMSE's proposed system, *see* AMSE's full amended exemption application and exhibits, which are published with this notice on the Commission's Web site at *http://www.sec.gov/rules/other.shtml.*

[6] *See* email from Michael Stegawski, Chief Regulatory Officer, AMSE, to SEC staff, dated November 14, 2014.

[7] *See* Order Instituting Proceedings, *supra* note 3, at 64422.

[8] *See* Regulation ATS Adopting Release, 63 FR at 70898–70901 (discussing the Commission's revised interpretation of the ''exchange'' definition). Among other things, the Commission stated that ''the first essential element of an exchange is the bringing together of orders of multiple buyers and sellers.'' *Id.* at 70900.

AMSE's exemption application states that AMSE would operate as a self-regulatory organization that would exercise self-regulatory authority over its members.[9] A ''self-regulatory organization'' is defined under Section 3(a)(26) of the Exchange Act as ''any national securities exchange, registered securities association, or registered clearing agency. . . .'' [10] Section 5 of the Exchange Act provides that an exchange must be either (1) registered as a national securities exchange under Section 6 of the Exchange Act or (2) exempted from such registration on the basis of limited volume of transactions effected on the exchange.[11] An exchange can only become a ''national securities exchange,'' and thus a self-regulatory organization, by registering under Section 6 of the Exchange Act.[12] An exchange that is exempt under Section 5 of the Exchange Act on the basis of limited volume of transactions, however, is relieved from registering as a national securities exchange under Section 6 of the Exchange Act and therefore is not a self-regulatory organization.[13] If the Commission were to grant AMSE's exemption application, however, AMSE would not be a registered national securities exchange and, therefore, would not become a self-regulatory organization as defined under Section 3(a)(26) of the Exchange Act.[14] Accordingly, it appears that any attempts by AMSE to hold itself out as a self-regulatory organization while simultaneously seeking an exemption under Section 5 would be contrary to the Exchange Act.

The Commission notes that it has not reached any conclusions with respect to AMSE's exemption application. Rather, the Commission seeks and encourages interested persons to provide additional comment on the exemption application as amended by Amendment No. 1.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning AMSE's exemption application as amended by Amendment No. 1, including whether AMSE's exemption application as amended by Amendment No. 1 is consistent with the Exchange Act.

1. While the Commission requests comment on all aspects of AMSE's exemption application as amended by Amendment No. 1, the Commission specifically requests comment on whether statements made in Amendment No. 1 are consistent with other statements in the exemption application, including those made in Exhibit E thereto. For example:

- In Amendment No. 1, in Exhibit E, AMSE states that ''[t]he Exchange will bring together orders for multiple buyers and sellers and such will be done by the use of consolidated quotation systems which effect transactions for multiple buyers and sellers. The consolidated quotation systems will display, or otherwise represent, trading interests entered on the AMSE system to its system users. AMSE may use a centralized order router which would match trading interests on the electronic order book of one member with the trading interests on the electronic order book of a second member.'' [15]
- But Exhibit E to AMSE's exemption application also states ''[t]he Exchange has designed its System to allow its Exchange Members to individually determine the best method for display of quotations and entry of orders through the Exchange. Thus, Exchange Members may develop their own customized electronic order books and routing systems, but shall report their transactions to the Exchange at such intervals as required by the Exchange.'' In addition, Exhibit E states ''[t]rades shall occur when an order to buy and an order to sell match on the Exchange Member's electronic order book. Each Exchange Member shall adopt rules to govern the execution and priority of orders.''

2. The Commission specifically requests comment on whether the following are sufficiently clear from AMSE's exemption application, as amended by Amendment No. 1:

- How would AMSE's consolidated quotation systems, which according to AMSE ''will display, or otherwise represent, trading interests entered on the AMSE system to its system users,'' effect transactions?
- If AMSE's consolidated quotation systems do effect transactions, how is that consistent with the statement in Exhibit E that ''[t]rades shall occur when an order to buy and an order to sell match on the Exchange Member's electronic order book?''
- If AMSE's consolidated quotation systems do effect transactions, what are the established non-discretionary methods (*e.g.,* execution priority rules) by which orders from members interact with each other through AMSE's consolidated quotation systems?
- Amendment No. 1 states that ''AMSE *may* use a centralized order router'' (emphasis added). Under what circumstances would AMSE use or not use the centralized order router? How would the centralized order router function? What methods (discretionary or non-discretionary) would determine how the centralized order router ''would match trading interests on the electronic order book of one member with the trading interests on the electronic order book of a second member?''
- What does it mean for AMSE's centralized order router to ''match trading interest?'' Does ''match trading interest'' mean bringing together orders using established non-discretionary methods in the consolidated quotation system, or does it mean routing an order from one member's order book to another member's order book for a transaction to occur on the member's order book? If the former, what are the established non-discretionary methods by which orders from members interact with each other through the centralized router (*e.g.,* execution priority rules)?
- What other functions, if any, does the centralized order router do other than provide the technology and systems to route trading interest from one member's order book to another member's order book? In particular, does the centralized order router decide when to send trading interest from one member's electronic order book to another member's electronic order book, or does the AMSE member have to take action to route the trading interest? If the centralized order router decides when to route trading interest from one

[9] *See, e.g.,* AMSE Operating Agreement Article III, Section 1(e) (''In light of the unique nature of the Company, its operations, *its status as a SRO. . . .*'' (emphasis added)); Article XI, Section 2 (''All meetings of the Board (and any committees of the Board) *pertaining to the self-regulatory function of the Company* (including disciplinary matters). . . .'' (emphasis added)); and Article XI, Section 3 (''to the extent necessary or appropriate to *discharge properly the self-regulatory responsibilities of the Company.''* (emphasis added)).

[10] 15 U.S.C. 78c(a)(26).

[11] 15 U.S.C. 78e.

[12] 15 U.S.C. 78f(a).

[13] In an order granting a limited volume exemption from registration as a national securities exchange under Section 5 of the Exchange Act to Wunsch Auction Systems Inc., the Commission stated ''[b]y virtue of this exemption from registration, the Wunsch System falls outside the definition of a national securities exchange because the term ''national securities exchange'' implies a registered entity (*see, e.g.,* sections 3(a)(26) of the [Exchange] Act (defining the term ''self-regulatory organization'') and section 6(a) of the [Exchange] Act.'' *See* Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377, 8382 (February 28, 1991) (File No. 10–100).

[14] The Commission notes that, even if AMSE's exemption application were to be approved, the broker-dealer members of AMSE would not be able to satisfy their requirement to be members of a self-regulatory organization by their membership with AMSE; rather such broker-dealers would be required to be members of a registered securities association or a national securities exchange if such broker-dealers effect transactions solely on that exchange, pursuant to Section 15(b)(1)(B) of the Exchange Act. *See* 15 U.S.C. 78o(b)(1)(B).

[15] *See supra* note 5.

member's book to another member's book, under what rules or protocols does it make such decisions?

• Would an AMSE member be required to use AMSE's consolidated quotations systems or would the AMSE member be allowed to display trading interest submitted to its order book through other means, including its own data feed?

• Are members required to use AMSE's centralized order router? Are members required to route trading interest to other members if an execution could occur, or is routing between members discretionary? For example, assume Member 1's order book has no sell interest in XYZ stock. If Member 1 receives buy interest in XYZ stock that could execute against sell interest in XYZ stock on Member 2's order book, would Member 1 be required to route such buy interest to Member 2 or could Member 1 post such buy interest to its order book?

3. The Commission specifically requests comment on whether statements made in AMSE's exemption application pertaining to its intent to operate as an SRO are consistent with statements in the application pertaining to its exemption request. As noted above, AMSE's application states that it intends to operate as an SRO. But, AMSE's application also states that it is seeking an exemption from registering as a national securities exchange. If AMSE were granted an exemption from registering as a national securities exchange, AMSE would not be a registered national securities exchange and hence would not be an SRO. The Commission seeks comment on the inconsistencies between these statements in AMSE's application.

Comments may be submitted by any of the following methods:

*Electronic Comments*

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml);* or

• Send an email to *rule-comments@sec.gov*. Please include File Number 10–214 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number 10–214. 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/other.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to AMSE's exemption application filed with the Commission, and all written communications relating to the application 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. 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 10–214 and should be submitted on or before January 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–30437 Filed 12–29–14; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 17 CFR 200.30–3(a)(71)(ii).

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 31394; 812–14347]**

## Pacer Funds Trust, et al.; Notice of Application

December 22, 2014.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

*Summary of Application:* Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

*Applicants:* Pacer Funds Trust (the ''Trust''), Pacer Advisors, Inc. (''Initial Adviser''), and Pacer Financial, Inc. (the ''Distributor'').

*Filing Dates:* The application was filed on August 15, 2014, and amended on September 24, 2014, and December 4, 2014.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 16, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 16 Industrial Blvd., Suite 201, Paoli, PA 19301.

**FOR FURTHER INFORMATION CONTACT:** Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

**Applicants' Representations**

1. The Trust is a Delaware statutory trust and is, or will be prior to the commencement of operations of the Initial Fund (defined below), registered under the Act as an open-end management investment company. Applicants state that the Trust will offer a number of series, each of which has a distinct investment objective, tracks a particular index and utilizes either a replication or representative sampling strategy. Each Fund (defined below) will operate as an exchange-traded fund (''ETF'').

2. The Initial Adviser will be the investment adviser to the Initial Fund (defined below), which is described in Appendix A to the application. The Initial Adviser is, and any other Adviser (defined below) will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (each, a ''Sub-Adviser''). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Distributor will serve as the principal underwriter and distributor for each of the Funds. The Distributor is an affiliated person of the Initial Adviser within the meaning of section 2(a)(3)(C) of the Act. Applicants request that the order also apply to any other future principal underwriter and distributor to Future Funds (defined below) (''Future Distributor''), provided that any such Future Distributor complies with the terms and conditions of the application. The Distributor is, and any Future Distributor will be, registered as a broker-dealer (''Broker'') under the Securities Exchange Act of 1934 (''Exchange Act''). The Distributor is not, and no Future Distributor will be, affiliated with any Exchange (defined below).

4. Applicants request that the order apply to a new series of the Trust (''Initial Fund'') and any additional series of the Trust, and any other open-end management investment company or series thereof that may be created in the future (''Future Funds'' and together with the Initial Fund, ''Funds''), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.[1]

5. Each Fund will hold certain securities, assets, or other positions (''Portfolio Holdings'') selected to correspond generally to the performance of its Underlying Index. Certain Funds will be based on Underlying Indexes comprised solely of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) Domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes that will be comprised of foreign and domestic or solely foreign equity and/or fixed income securities (''Foreign Funds'').

6. Applicants represent that each Fund will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index (''Component Securities''), or, in the case of Fixed Income Funds,[2] in the Component Securities of its respective Underlying Index and TBA Transactions[3] representing Component Securities and, in the case of Foreign Funds, Component Securities and Depositary Receipts[4] representing Component Securities. Each Fund may also invest up to 20% of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash and cash equivalents, other investment companies, as well as in securities and other instruments not included in its Underlying Index but which the Adviser believes will help the Fund track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

7. The Trust may issue Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies (''130/30 Funds'') or other long/short investment strategies (''Long/Short Funds''). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index[5] and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long positions in securities so that total long exposure represents approximately 130% of a Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets. Each Business Day (as defined below), for each Long/Short Fund and 130/30 Fund, the Adviser will provide full portfolio transparency on the Fund's publicly available Web site (''Web site'') by making available the Fund's Portfolio Holdings before the commencement of trading of Shares on the Listing Exchange (defined below).[6] The information provided on the Web site will be formatted to be reader-friendly.

8. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same

[1] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[2] ''Fixed Income Funds'' track an Underlying Index comprised of domestic and/or foreign fixed income securities.

[3] A ''to-be-announced transaction'' or ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[4] Depositary receipts representing foreign securities (''Depositary Receipts'') include American Depositary Receipts and Global Depositary Receipts. The Funds may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a ''depositary bank'') and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund.

[5] Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.''

[6] Under accounting procedures followed by each Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

weighting as the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

9. Each Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains the Underlying Index (each, an ''Index Provider'') or a sub-licensing arrangement with the Adviser, which will have a licensing agreement with such Index Provider.[7] A ''Self-Indexing Fund'' is a Fund for which an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of such person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an ''Affiliated Index Provider'') will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an ''Affiliated Index'').[8] Except with respect to the Self-Indexing Funds, no Index Provider is or will be an affiliated person, or a Second-Tier Affiliate, of the Trust or a Fund, of an Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor or any Future Distributor.

10. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated.

11. Applicants propose that each day that the Trust, the NYSE and the national securities exchange (as defined in section 2(a)(26) of the Act) (an ''Exchange'') on which the Fund's Shares are primarily listed (''Listing Exchange'') are open for business, including any day that a Fund is required to be open under section 22(e) of the Act (a ''Business Day''), each Self-Indexing Fund will post on its Web site, before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the Portfolio Holdings held by the Fund that will form the basis for the Fund's calculation of its NAV at the end of the Business Day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will also provide an effective additional mechanism for addressing any such potential conflicts of interest.

12. In addition, applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[9]

13. Each Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, the Initial Adviser has adopted policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the Initial Adviser or an associated person (''Inside Information Policy''). Any other Adviser or Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics[10] and Inside Information Policy of each Adviser and Sub-Advisers, personnel of those entities with knowledge about the composition of the Portfolio Deposit[11] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by the Index Provider. The Adviser will also include under Item 10.C. of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

14. To the extent the Self-Indexing Funds transact with an affiliated person of the Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees (''Board'') will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, an Adviser, affiliated persons of the Adviser (''Adviser Affiliates'') and affiliated persons of any Sub-Adviser (''Sub-Adviser Affiliates'') may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by an Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under

[7] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (as defined below), or in case of a sub-licensing agreement, the Adviser, must provide the use of the Affiliated Indexes (as defined below) and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[8] The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

[9] *See, e.g.,* Rule 17j–1 under the Act and Section 204A under the Advisers Act and Rules 204A–1 and 206(4)–7 under the Advisers Act.

[10] The Initial Adviser has also adopted (and any other Adviser has adopted or will adopt) a code of ethics pursuant to Rule 17j–1 under the Act and Rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in Rule 17j–1) from engaging in any conduct prohibited in Rule 17j–1 (''Code of Ethics'').

[11] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing is referred to as the ''Portfolio Deposit.''

the Act and any relevant guidelines from the staff of the Commission. Applications for prior orders granted to Self-Indexing Funds have received relief to operate such funds on the basis discussed above.[12]

15. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[13] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions)[14] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[15] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind[16] will be excluded from the Deposit Instruments and the Redemption Instruments;[17] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[18] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

16. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant (as defined below), the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;[19] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[20]

17. Creation Units will consist of specified large aggregations of Shares (*e.g.,* 10,000 Shares), and it is expected that the initial trading price per individual Share will range from $15 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant'' which is either (1) a ''Participating Party,'' *i.e.,* a Broker or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company (''DTC'') (''DTC Participant''), which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

18. Each Business Day, before the open of trading on the Listing Exchange, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published

[12] *See, e.g.,* Guggenheim Funds Investment Advisors, LLC, Investment Company Act Release Nos. 30560 (June 14, 2013) (notice) and 30598 (July 10, 2013) (order); and Sigma Investment Advisors, LLC, Investment Company Act Release Nos. 30559 (June 14, 2013) (notice) and 30597 (July 10, 2013) (order).

[13] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

[14] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

[15] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[16] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[17] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[18] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

[19] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[20] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

19. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees (''Transaction Fees'') in connection with effecting such purchases or redemptions of Creation Units. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[21] The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

20. The Trust will submit an application to list the Shares of each Fund on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a ''Market Maker'') and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

21. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[22] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

22. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

23. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a ''mutual fund.'' Instead, each such Fund will be marketed as an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

## Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

### Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

### Section 22(d) of the Act and Rule 22c–1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a

[21] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

[22] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c 1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

**Section 22(e)**

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fourteen (14) calendar days. Accordingly, with respect to Foreign Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fourteen calendar days following the tender of Creation Units for redemption.[23]

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fourteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fourteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

**Section 12(d)(1)**

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts (''UITs'') that are not advised or sponsored by the Adviser, and not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as ''Investing Management Companies,'' such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Funds of Funds''), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any Broker registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, a ''Fund of Funds Sub-Adviser''). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Fund.[24] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds

[23] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

[24] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group'').

15. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[25]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

[25] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

**Sections 17(a)(1) and (2) of the Act**

19. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an ''Affiliated Fund''). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

20. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are affiliated persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions ''in-kind.''

21. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making ''in-

kind'' purchases or ''in-kind'' redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for ''in-kind'' purchases of Creation Units and the redemption procedures for ''in-kind'' redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that ''in-kind'' purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that ''in-kind'' purchases and redemptions will be made on terms reasonable to Applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating ''in-kind'' purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating ''in-kind'' redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions ''in-kind'' will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

22. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[26] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[27] Applicants believe that any proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

**Applicants' Conditions**

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

*A. ETF Relief*

1. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing Fund, Long/Short Fund and 130/30 Fund will post on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's Portfolio Holdings.

6. No Adviser or any Sub-Adviser to a Self-Indexing Fund, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Self-Indexing Fund) to acquire any Deposit Instrument for the Self-Indexing Fund through a transaction in which the Self-Indexing Fund could not engage directly.

*B. Fund of Funds Relief*

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund or a Fund Affiliate.

[26] Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, a Fund of Funds might seek to transact in Creation Units directly with a Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

[27] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''non-interested Board members''), will determine that any consideration paid by the Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–l under the Act) received from a Fund by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, including a majority of the non-interested directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the Trust will execute a FOF Participation Agreement stating without limitation that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained

in section 12(d)(1)(A) of the Act, except to the extent the Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund to acquire securities of one or more investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–30436 Filed 12–29–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IA–3990/803–00214]**

## William E. Simon & Sons, LLC; New Vernon Advisors, Inc.; Notice of Application

December 22, 2014.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application for an exemptive order under section 202(a)(11)(H) of the Investment Advisers Act of 1940 (''Advisers Act'').

**APPLICANT:** William E. Simon & Sons, LLC and New Vernon Advisors, Inc. (together, the ''Applicant'').

**RELEVANT ADVISERS ACT SECTIONS:** Exemption requested under section 202(a)(11)(H) of the Advisers Act from section 202(a)(11) of the Advisers Act.

**SUMMARY:** *Summary of Application:* The Applicant requests that the Commission issue an order declaring it to be a person not within the intent of Section 202(a)(11) of the Advisers Act, which defines the term ''investment adviser.''

**DATES:** *Filing Dates:* The application was filed on June 20, 2012; an amended application was filed on April 1, 2014, August 13, 2014, November 12, 2014, and December 16, 2014.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 16, 2015, 2014, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Advisers Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549. The Applicant, William E. Simon & Sons, LLC and New Vernon Advisors, Inc., c/o James E. Anderson, WilmerHale, 1875 Pennsylvania Ave. NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Michael S. Didiuk, Senior Counsel, at (202) 551–6839 or Holly L. Hunter-Ceci, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site either at *http://www.sec.gov/rules/iareleases.shtml* or by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

### The Applicant's Representations

1. The Applicant is a multi-generational single-family office that provides services to the family and descendants of William E. Simon. The Applicant is wholly-owned by Family Clients and is exclusively controlled (directly and indirectly) by one or more Family Members and/or Family Entities in compliance with Rule 202(a)(11)(G)–1 (the ''Family Office Rule''). For purposes of the application, the term ''Simon Family'' means the lineal descendants of William E. Simon, their spouses, and all of the persons and entities that qualify as Family Clients as defined in paragraph (d)(4) of the Family Office Rule. Capitalized terms herein have the same meaning as defined in the Family Office Rule.

2. The Applicant provides both advisory and non-advisory services (collectively, ''Services''). Any Service provided by the Applicant that relates to investment advice about securities or may otherwise be construed as advisory in nature is considered an ''Advisory Service.''

3. The Applicant represents that: (i) Other than the exception discussed in representation 4 below, each of the persons served by the Applicant is a Family Client, *i.e.,* the Applicant has no investment advisory clients other than Family Clients as required by paragraph (b)(1) of the Family Office Rule; (ii) the Applicant is owned and controlled in a manner that complies in all respects with paragraph (b)(2) of the Family Office Rule; and (iii) the Applicant does not hold itself out to the public as an investment adviser as required by paragraph (b)(3) of the Family Office Rule. At the time of the application, the Applicant represents that Family Members account for approximately 89 percent of the natural persons to whom the Applicant provides Advisory Services.

4. The Applicant provides Services to the sibling of a former spouse of William E. Simon's lineal descendant (''Former Sister-in-Law'') as well as a private foundation funded exclusively by this sibling (collectively, the ''Additional Family Client''). The Applicant represents that if the Former Sister-in-Law were a Family Client, the related foundation would meet the requirements of (d)(4)(v) of the Family Office Rule.

5. The Additional Family Client does not have an ownership interest in the Applicant. The Applicant represents that the assets beneficially owned by Family Members and/or Family Entities (excluding the Additional Family Client's Family Entity) make up at least 75 percent of the total assets for which the Applicant provides Advisory Services.

6. The Applicant represents that the Additional Family Client has important familial ties to and is an integral part of the Simon Family. The Applicant maintains that including the Additional Family Client in the ''family'' simply recognizes and memorializes the familial ties and intra-familial relationships that already exist, and have existed for at least 26 years while the assets of the Additional Family Client were managed by the Simon Family.

### The Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines the term ''investment adviser'' to mean ''any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. . . .''

2. The Applicant falls within the definition of an investment adviser under Section 202(a)(11). The Family Office Rule provides an exclusion from the definition of investment adviser for which the Applicant would be eligible but for the provision of Services to the Additional Family Client. Section 203(a) of the Advisers Act requires investment

advisers to register with the SEC. Because the Applicant has regulatory assets under management of more than $100 million, it is not prohibited from registering with Commission under Section 203A(a) of the Advisers Act. Therefore, absent relief, the Applicant would be required to register under Section 203(a) of the Advisers Act.

3. The Applicant submits that its relationship with the Additional Family Client does not change the nature of the office into that of a commercial advisory firm. In support of this argument, the Applicant notes that if the Former Sister-in-Law were the spouse of a lineal descendant, rather than the sibling of a former spouse of a lineal descendant, there would be no question that each of the persons presently being served by the office would be a Family Member, and that the related foundation would meet the requirements of paragraph (d)(4)(v) of the Family Office Rule pertaining to charitable foundations. The Applicant states that in requesting the order, the office is not attempting to expand its operations or engage in any level of commercial activity to which the Advisers Act is designed to apply. Indeed, although the Additional Family Client does not fall within the definition of Family Member, she is considered to be, and treated as, a member of the Simon Family and the number of natural persons who are not Family Members as a percentage of the total natural persons to whom the office would provide Advisory Services if relief were granted would be only approximately 11 percent. The Applicant maintains that, from the perspective of the Simon Family, the Applicant seeks to continue providing Advisory Services exclusively to members of a single family.

4. The Applicant also submits that there is no public interest in requiring the Applicant to be registered under the Advisers Act. The Applicant states that the office is a private organization that was formed to be the ''family office'' for the Simon Family, and that the office does not have any public clients. The Applicant maintains that the office's Advisory Services are tailored exclusively to the needs of the Simon Family and the Additional Family Client. The Applicant argues that the presence of the Additional Family Client, who has been receiving Advisory Services from the office for 26 years, does not create any public interest that would require the office to be registered under the Advisers Act that is different in any manner than the considerations that apply to a ''family office'' that complies in all respects with the Family Office Rule.

5. The Applicant argues that, although the Family Office Rule largely codified the exemptive orders that the Commission had previously issued before the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission recognized in proposing the rule that the exact representations, conditions, or terms contained in every exemptive order could not be captured in a rule of general applicability. The Commission noted that family offices would remain free to seek a Commission exemptive order to advise an individual or entity that did not meet the proposed family client definition, and that certain situations may raise unique conflicts and issues that are more appropriately addressed through an exemptive order process where the Commission can consider the specific facts and circumstances, than through a rule of general applicability. The Applicant maintains that its unusual circumstances—providing Services to Family Clients and to an Additional Family Client for the past 26 years—have not changed the nature of the office's operations into that of a commercial advisory business, and that an exemptive order is appropriate based on the Applicant's specific facts and circumstances.

6. For the foregoing reasons, the Applicant requests an order declaring it to be a person not within the intent of Section 202(a)(11) of the Advisers Act. The Applicant submits that the order is necessary and appropriate, in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Advisers Act.

**The Applicant's Conditions**

1. The Applicant will offer and provide Advisory Services only to Family Clients and to the Additional Family Client, who will generally be deemed to be, and be treated as if she and the related foundation were, a Family Client; provided, however, that the Additional Family Client will be deemed to be, and treated as if she were, a Family Member for purposes of paragraph (b)(1) and for purposes of paragraph (d)(4)(vi) of the Family Office Rule.

2. The Applicant will at all times be wholly owned by Family Clients and exclusively controlled (directly or indirectly) by one or more Family Members and/or Family Entities (excluding the Additional Family Client's Family Entity) as defined in paragraph (d)(5) of the Family Office Rule.

3. At all times the assets beneficially owned by Family Members and/or Family Entities (excluding the Additional Family Client's Family Entity) will account for at least 75 percent of the assets for which the Applicant provides Advisory Services.

4. The Applicant will comply with all the terms for exclusion from the definition of investment adviser under the Advisers Act set forth in the Family Office Rule except for the limited exception requested by this Application.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–30435 Filed 12–29–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–31388; File No. 812–14403]**

## Royal Bank of Canada, et al.; Notice of Application and Temporary Order

December 19, 2014.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

**SUMMARY OF APPLICATION:** Applicants have received a temporary order (''Temporary Order'') exempting them from section 9(a) of the Act, with respect to an injunction entered against Royal Bank of Canada (''RBC'') on December 18, 2014 by the United States District Court for the Southern District of New York (''Court''), in connection with a consent order between RBC and the United States Commodity Futures Trading Commission (''CFTC''), until the Commission takes final action on an application for a permanent order (the ''Permanent Order,'' and with the Temporary Order, the ''Orders''). Applicants also have applied for a Permanent Order.

**APPLICANTS:** RBC, RBC Europe Limited (''RBC EL''), RBC Capital Markets Arbitrage, S.A. (''CMA''), RBC Global Asset Management (U.S.) Inc. (''GAM US''), BlueBay Asset Management LLP (''BlueBay LLP''), BlueBay Asset Management USA LLC (''BlueBay USA''), and RBC Global Asset Management (UK) Limited (''GAM UK'') (each an ''Applicant'' and collectively, the ''Applicants'').

**DATES:** *Filing Date:* The application was filed on December 19, 2014.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 12, 2015, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: RBC: 200 Bay Street, Toronto, Ontario, Canada M5J 2J5, GAM US, 50 South 6th Street, Minneapolis, MN 55402, BlueBay LLP, 77 Grosvenor Street, London W1K 3JR United Kingdom, BBAM USA, 4 Stamford Plaza, 107 Elm Street, Suite 512, Stamford, CT 06902, GAM UK and RBC EL, Riverbank House, 2 Swan Lane, London EC4R 3BF United Kingdom, and CMA, 16 Rue Notre Dame, Luxembourg, 2240, Luxembourg.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Melissa R. Harke, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a temporary order and a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

## Applicants' Representations

1. RBC is a Canadian-chartered bank and a Canada-based global financial services firm. RBC is the ultimate parent of the other Applicants. RBC EL is a United Kingdom-based subsidiary of RBC that is registered in the United Kingdom to engage in capital market activities. CMA is a Luxembourg-based subsidiary of RBC that engages primarily in interdealer market making and proprietary trading. GAM US is a corporation formed under the laws of Minnesota. BlueBay LLP is a limited liability partnership incorporated in England and Wales. BlueBay USA is a limited liability company formed under the laws of Delaware. GAM UK is a corporation formed under the laws of the United Kingdom. GAM US, BlueBay LLP, BlueBay USA and GAM UK are each a wholly-owned subsidiary of RBC and are each an investment adviser registered under the Investment Advisers Act of 1940. GAM US, BlueBay LLP, BlueBay USA and GAM UK each serve as investment adviser or investment sub-adviser to investment companies registered under the Act, or series of such companies (each a ''Fund'') and are collectively referred to as the ''Fund Servicing Applicants.''

2. While no existing company of which RBC is an affiliated person within the meaning of section 2(a)(3) of the Act (''Affiliated Person''), other than the Fund Servicing Applicants, currently serves or acts as an investment adviser or depositor of any Fund, employees' securities company or investment company that has elected to be treated as a business development company under the Act, or principal underwriter (as defined in section 2(a)(29) of the Act) for any open-end management investment company registered under the Act (''Open-End Fund''), unit investment trust registered under the Act (''UIT''), or face-amount certificate company registered under the Act (''FACC'') (such activities, ''Fund Services Activities''),[1] Applicants request that any relief granted also apply to any existing company of which RBC is an Affiliated Person, other than RBC EL and CMA, and to any other company of which RBC may become an Affiliated Person in the future (together with the Fund Servicing Applicants, the ''Covered Persons'') with respect to any activity contemplated by section 9(a) of the Act.

3. On April 22, 2012, the CFTC filed a complaint, and on October 17, 2012, an amended complaint which superseded the original complaint (the ''Complaint'') in the Court captioned *Commodity Futures Trading Commission* v. *Royal Bank of Canada* (the ''Action''). The Complaint alleged that RBC entered into certain stock futures contract transactions in ''block trades,'' which are privately negotiated transactions pursuant to exchange rules, and that RBC entered into these block trades through its branches and internal trading accounts, and it traded opposite RBC EL and CMA. The Complaint also alleged a violation of Section 4c(a) of the Commodity Exchange Act (''CEA''), whereby RBC entered into the block trades with an express or implied understanding that the positions resulting from the trades would later be offset or delivered opposite each other, which achieved an economic and futures market nullity for the RBC corporate group because the RBC corporate group as a whole was not exposed to risk in the futures market. Furthermore, the Complaint alleged that, in violation of CFTC Regulation 1.38(a), the express or implied understandings for later trades were not reported to the OneChicago, LLC (''OneChicago'') futures exchange ''without delay,'' as required by OneChicago's rules.

4. RBC and the CFTC have reached an agreement to settle the Action. As part of the agreement, the CFTC submitted a consent order (''Consent Order'') to the Court. RBC has consented to the entry of the Consent Order by the Court, without admitting or denying the findings set forth therein (other than those relating to the jurisdiction of the Court and the jurisdiction of the CFTC over the Conduct[2]). On December 18, 2014 the Court entered the Consent Order which enjoins RBC from violating section 4c(a) of the CEA and CFTC Regulation 1.38(a) (the ''Injunction'') and required RBC to pay a civil monetary penalty of $35,000,000.[3]

## Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an underwriter, broker or dealer, from acting, amCFTC v. Royal Bank of Canada, 12–CV–2497, (S.D.N.Y. Dec. 18, 2014).ong other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any Open-End Fund, UIT or FACC. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that, taken together, sections 9(a)(2) and 9(a)(3)

[1] RBC, RBC EL, and CMA are parties to the application, but do not and will not engage in Fund Services Activities.

[2] The alleged conduct giving rise to the Injunction (defined below) is referred to herein as the ''Conduct.''

[3] See Consent Order, CFTC v. Royal Bank of Canada, 12–cv–2497, Dkt. No. 124 (S.D.N.Y. Dec. 18, 2014).

would have the effect of precluding the Fund Servicing Applicants and Covered Persons from engaging in Fund Services Activities upon the entry of the Injunction against RBC because RBC is an Affiliated Person of each Fund Servicing Applicant and Covered Person.

2. Section 9(c) of the Act provides that, upon application, the Commission shall by order grant an exemption from the disqualification provisions of section 9(a) of the Act, either unconditionally or on an appropriate temporary or other conditional basis, to any person if that person establishes that: (a) The prohibitions of section 9(a), as applied to the person, are unduly or disproportionately severe or (b) the conduct of the person has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a Temporary Order and a Permanent Order exempting the Fund Servicing Applicants and other Covered Persons from the disqualification provisions of section 9(a) of the Act. The Fund Servicing Applicants and other Covered Persons may, if the relief is granted, in the future act in any of the capacities contemplated by section 9(a) of the Act subject to the applicable terms and conditions of the Orders.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has not been such as to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state the Conduct did not involve any of the Applicants engaging in Fund Services Activities. Applicants also state that the Conduct did not involve any Fund or the assets of any Fund. In addition, Applicants state that the Conduct involved proprietary trading in accounts owned by RBC, RBC EL and CMA and was not conducted on behalf of any Fund or using assets of any Fund.

5. Applicants state that: (a) None of the current directors, officers or employees of the Fund Servicing Applicants (or any other persons serving in such capacity during the time period covered by the Complaint) participated in the Conduct and (b) the personnel at RBC, RBC EL, or CMA who participated in the Conduct or who may subsequently be identified by RBC, RBC EL, CMA, or any U.S. or non-U.S. regulatory or enforcement agency as having been responsible for the Conduct have had no, and will not have any involvement in providing Fund Services Activities and will not serve as an officer, director, or employee of any Covered Person. Applicants assert that because the personnel of the Fund Servicing Applicants did not participate in the Conduct, the shareholders of Funds were not affected any differently than if those Funds had received services from any other non-affiliated investment adviser or sub-adviser.

6. Applicants submit that section 9(a) should not operate to bar them from serving the Funds and their shareholders in the absence of improper practices relating to their Fund Services Activities. Applicants state that the section 9(a) disqualification could result in substantial costs to the Funds to which the Fund Servicing Applicants provide investment advisory services, and such Funds' operations would be disrupted, as they sought to engage new advisers or sub-advisers. Applicants assert that these effects would be unduly severe given the Fund Servicing Applicants' lack of involvement in the Conduct. Moreover, Applicants state that RBC has taken remedial actions to address the Conduct, as outlined in the application. Thus, Applicants believe that granting the exemption from section 9(a), as requested, would be consistent with the public interest and the protection of investors.

7. Applicants state that the inability of the Fund Servicing Applicants to continue to provide investment advisory services to Funds would result in those Funds and their shareholders facing unduly and disproportionately severe hardships. Applicants state that they will distribute to the boards of directors of the Funds (the ''Boards'') written materials describing the circumstances that led to the Injunction and any impact on the Funds, and the application. The written materials will include an offer to discuss the materials at an in-person meeting with each Board for which the Fund Servicing Applicants provide Fund Services Activities, including the directors who are not ''interested persons'' of such Funds as defined in section 2(a)(19) of the Act, and their independent legal counsel as defined in rule 0–1(a)(6) under the Act. Applicants state they will provide the Boards with the information concerning the Injunction and the application that is necessary for those Funds to fulfill their disclosure and other obligations under the federal securities laws and will provide them a copy of the Consent Order as entered by the Court.

8. Applicants state that if the Fund Servicing Applicants were barred under section 9(a) of the Act from providing investment advisory services to the Funds, and were unable to obtain the requested exemption, the effect on their businesses and employees would be unduly and disproportionately severe because they have committed substantial capital and other resources to establishing an expertise in advising Funds. Applicants further state that prohibiting the Fund Servicing Applicants from engaging in Fund Services Activities would not only adversely affect their businesses, but would also adversely affect their employees who are involved in those activities. Applicants state that many of these employees working for the Fund Servicing Applicants could experience significant difficulties in finding alternative fund-related employment.

9. Applicants state that certain affiliates of the Applicants have previously received an order under section 9(c) of the Act, as the result of conduct that triggered section 9(a), as described in greater detail in the application.

**Applicants' Conditions**

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

2. Each Applicant and Covered Person will adopt and implement policies and procedures reasonably designed to ensure that it will comply with any terms and conditions of the Orders within 60 days of the date of the Permanent Order.

3. RBC will comply with the terms and conditions of the Consent Order.

4. Applicants will provide written notification to the Chief Counsel of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement of a material violation of the terms and conditions of the Orders or Consent Order within 30 days of discovery of the material violation.

**Temporary Order**

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

*It is hereby ordered,* pursuant to section 9(c) of the Act, that the Fund Servicing Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the representations and conditions in the application, from December 18, 2014, until the Commission takes final action on their application for a permanent order.

By the Commission.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–30225 Filed 12–29–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73909; File No. SR–NYSEArca–2014–140]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rules Regarding Trade Nullification and Price Adjustment

December 22, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 16, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend exchange rules regarding trade nullification and price adjustment. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to add Rule 6.77A, ''Trade Nullification and Price Adjustment Procedure.'' [3] As proposed, Rule 6.77A would allow for transactions to be nullified if both parties to the transaction agree to the nullification and allow the price of executions to be adjusted if the price adjustment is agreed to by both parties to the transaction and authorized by the Exchange.[4] The Exchange is also proposing to make other conforming administrative changes to streamline the rules governing this subject with the Exchange's rules.

Background

Currently, pursuant to Commentary .02 of Rule 6.77, the Exchange allows for parties to agree to nullify an execution. Commentary .02 of Rule 6.77 also states that once both parties agree to the trade nullification, one party must ''promptly notify the Exchange for dissemination of cancellation information to the Options Price Reporting Authority.'' In addition, the Exchange currently allows for a mutual price adjustment for trades that meet the obvious error (or catastrophic error) requirements pursuant to Exchange Rule 6.87 if those mutual agreements are done within specific timeframes.[5] The Exchange is now proposing to relocate the aforementioned trade nullification language and add a provision to allow parties to mutually adjust prices of executions outside of those done in obvious error. The Exchange's proposal is based upon similar rules of the Chicago Board Options Exchange (''CBOE'') and Miami International Securities Exchange, LLC (''MIAX'').[6]

Proposed Rule 6.77A

The Exchange is proposing to add Rule 6.77A, ''Trade Nullification and Price Adjustment Procedure,'' which would: (a) Allow for any trades on the Exchange to be nullified if both parties to the trade agree to such nullification, and (b) allow for prices of executions to be adjusted if the price adjustment is agreed upon by both parties to the trade and authorized by the Exchange.[7]

As stated above, the Exchange currently allows for trades to be nullified based upon mutual agreement.[8] With the proposed addition of Rule 6.77A, the Exchange is only renumbering and relocating this provision and is not proposing a substantive change to the rule itself. The Exchange believes that having the provision as a standalone rule would make it easier for OTP Holders to locate. In addition, the Exchange believes this administrative change would streamline the provisions surrounding this notion to put in one place.

The Exchange is also proposing to add a provision allowing OTP Holders to mutually agree to adjust a price of an execution. The Exchange believes this provision is necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge transactions in other markets, including securities and futures, many OTP Holders, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. In addition, the Exchange believes it is in the nature of a fair and orderly market to allow for price adjustments rather than only cancellations because an adjustment would result in the least amount of disruption to the overall market. The Exchange also notes that current Exchange rules allow for prices of trades to be adjusted at the consent

[3] The Exchange notes that there are efforts by the exchanges to create a uniform trade nullification and adjustment rule. Should the uniform rule be approved and effective, the Exchange will amend its rules appropriately.

[4] The Exchange notes that, as proposed, Rule 6.77A would only apply to trades that were executed on the Exchange and, as such, any orders that were either fully or partially routed to, or executed, on another exchange would not be subject to the proposed Rule 6.77A.

[5] *See* Rule 6.87(a)(3) and (7) and 6.87(d)(3).

[6] *See* CBOE Rule 6.19 and Securities Exchange Act Release No. 72970 (September 3, 2014), 79 FR 53498 (September 9, 2014) (SR–CBOE–2014–066) and MIAX Rule 531 and Release No. 73463 (October 29, 2014), 79 FR 65445 (November 4, 2014) (SR–MIAX–2014–54).

[7] *See* note 5 *supra.*

[8] *See* Commentary .02 of Rule 6.77.

of both parties if such transactions are within the current obvious error and catastrophic error provisions.[9] The Exchange is now proposing to merely allow this practice for any trade.

As proposed, Rule 6.77A expressly states that trades may be subject to nullification or price adjustment only if such trades are authorized by the Exchange. The Exchange notes that this process is very similar to the process OTP Holders follow today for trade nullification based upon mutual consent. As described in more detail above, Commentary .02 of current Rule 6.77 allows two parties to agree to a trade nullification and ''notify the Exchange for dissemination of cancellation information to the Options Price Reporting Authority.'' The Exchange is only slightly changing this procedure by expressly requiring Exchange authorization prior to the effectuation of such nullification or mutual price adjustment. The Exchange would only authorize a proposed nullification or adjustment if the Exchange received verification from both parties to the trade that a mutual agreement has been made.[10] In addition, prior to an authorization for a mutual price adjustment, the Exchange would ensure the agreed upon price would have been permissible and in compliance with any applicable rules of the Exchange and Securities and Exchange Commission, as amended, at the time the original transaction was executed.[11] Finally, the proposed rule would state that the format and information required by the Exchange for this submission would be released by the Exchange via Trader Update. As such, prior to Rule 6.77A becoming operative, the Exchange would provide OTP Holders with specific requirements via an Exchange-issued Trader Update. The Trader Update would, among other things, state specific timeframes required for requests and the format in which the requests would be accepted by the Exchange.

Administrative Changes

Finally, the Exchange is proposing to make administrative conforming changes to ensure Exchange rules on the subject are consistent. More specifically, the Exchange is proposing to delete Commentary .02 of Rule 6.77. The Exchange believes that deleting current Commentary .02 to Exchange Rule 6.77 would avoid any confusion with the proposed Rule 6.77A.

Conclusion

To conclude, the Exchange believes that the proposed changes are in furtherance of the Act because the proposed Rule 6.77A will allow OTP Holders to agree to nullify transactions or adjust prices of transactions to maintain a fair and orderly market. As stated above, the Exchange intends to release a Trade [sic] Update to announce the implementation of the Rule and other specifics surrounding the procedures of the implementation. In addition, prior to implementation, the Exchange will ensure it has proper policies and procedures in place to correctly administer the Rule.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[12] of the Act, in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

More specifically, the Exchange believes that the proposed changes are consistent with the Act as they are designed to promote just and equitable principles and protect investors and the public interest. In particular, the Exchange believes the proposed change to move the provision authorizing parties to mutually agree to nullify a trade to a separate, stand-alone rule protects investors by eliminating confusion and making the provision more clear. Because options trades are used to hedge transactions in other markets, including securities and futures, many market participants would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. In addition, the Exchange believes it is in the nature of a fair and orderly market to allow for price adjustments rather than only cancellations because an adjustment would result in the least amount of disruption to the overall market. Further, the Exchange believes that, harmonizing its nullification and adjustment rules with other options markets would promote just and equitable principles of trade by better allowing the market participants to be treated similarly across exchanges. The Exchange also believes that the other administrative changes would remove impediments to and perfect the mechanism of a fair and orderly market as they are merely trying to create more transparency in the Exchange's rules. Finally, the Exchange does not believe that the proposed changes are unfairly discriminatory because they will be applied to all OTP Holders equally.

*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 proposed rule change is not designed to address any aspect of competition, whether between the Exchange and its competitors, or among market participants. Instead, the proposed rule change is designed to adopt the nullification and adjustment of trades on similar terms to that of other options exchanges.[14]

*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.

[9] The Exchange notes that no changes are being proposed to the procedures for nullification or adjustment of a trade by mutual agreement in the Exchanges' obvious error and catastrophic error rules. *See* note 5 *supra.* With the effectiveness of proposed Rule 6.77A, OTP Holders would have two options to choose from in order to have their trades nullified or adjusted by mutual agreement: (i) Request under the procedures of Rule 6.87 (including the timeframes); or (ii) request under the procedures of Proposed Rule 6.77A which requires the authorization of the Exchange prior to the nullification or adjustment. The Exchange believes both provisions are complimentary [sic] in that they provide protections in different situations under procedures that are correspondingly appropriate based on the situation in which a nullification or an adjustment is requested.

[10] Upon authorization, the Exchange will continue to report any price adjustment or trade nullification to the Options Price Reporting Authority.

[11] Specifically, the Exchange would ensure that the mutually-agreed upon price would not have traded through resting interest on the Exchange or would have been in violation of Rule 991NY [sic] at the time of the initial execution.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* note 7 *supra.*

### 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) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### 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–2014–140 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–140. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–140, and should be submitted on or before January 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2014–30445 Filed 12–29–14; 8:45 am]

**BILLING CODE 8011–01–P**

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73914; File No. SR–NYSEArca–2014–100]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change Relating to Listing and Trading of Shares of the SPDR SSgA Global Managed Volatility ETF under NYSE Arca Equities Rule 8.600

December 22, 2014.

### I. Introduction

On September 5, 2014, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the SPDR SSgA Global Managed Volatility ETF (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on September 24, 2014.[3] On November 4, 2014, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received no comment letters on the proposed rule change. This Order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

### II. Description of the Proposal

*A. Generally*

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares will be offered by SSgA Active ETF Trust (''Trust''), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.[7] SSgA Funds Management, Inc. will serve as the investment adviser to the Fund (''Adviser''). State Street Global Markets, LLC will be the principal underwriter and distributor of the Fund's Shares, and State Street Bank and Trust Company (''Custodian'' or ''Transfer Agent'') will serve as administrator, custodian, and transfer agent for the Fund. The Exchange represents that the Adviser is not a registered broker-dealer but is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition of or changes to the Fund's portfolio.[8] The Exchange further represents that, in the event (a) the Adviser or any sub-

[1] 15 U.S. C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73141 (Sept. 18, 2014), 79 FR 57161 (''Notice'').

[4] 15 U.S. C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 73515, 79 FR 66758 (Nov. 10, 2014). The Commission designated a longer period within which to take action on the proposed rule change and designated December 23, 2014, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S. C. 78s(b)(2)(B).

[7] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). According to the Exchange, on September 20, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (''Securities Act'') and under the 1940 Act relating to the Fund (File Nos. 333–173276 and 811–22542) (''Registration Statement''). In addition, the Exchange states that the Trust has obtained from the Commission certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 29524 (Dec. 13, 2010) (File No. 812–13487).

[8] Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition of or changes to the investment company portfolio.

adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Adviser or any new adviser or sub-adviser, as the case may be, will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition of or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.[9]

*B. The Exchange's Description of the Fund*

The statements made below are representations and assertions by the Exchange concerning the Fund.

1. Principal Investment Policies

According to the Exchange, the Fund will seek to provide competitive, long-term returns while maintaining low, long-term volatility relative to the broad global market. Under normal circumstances,[10] the Fund will invest all of its assets in the SSgA Global Managed Volatility Portfolio (''Portfolio''), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a result, the Fund will invest indirectly through the Portfolio.

The Adviser will utilize a proprietary quantitative investment process to select a portfolio of exchange-listed and traded equity securities that the Adviser believes will exhibit low volatility and provide competitive, long-term returns relative to the broad global market.[11] The Portfolio will invest its assets in both U.S. and foreign investments. The Portfolio will generally invest at least 80% of its net assets in global equity securities and at least 30% of its net assets in global equity securities of issuers economically tied to countries other than the United States. The Portfolio will generally hold securities of issuers economically tied to at least three countries, including the United States. The Portfolio may purchase exchange-listed and traded common stocks and preferred securities of U.S. and foreign corporations.[12] The Adviser expects to favor securities with low exposure to market risk factors and low security-specific risk. The Adviser will consider market risk factors to include, among others, a security's size, momentum, value, liquidity, leverage, and growth. While the Adviser will attempt to manage the Fund's volatility exposure to stabilize performance, there can be no guarantee that the Fund will reach its target volatility. Additionally, the Adviser will implement risk constraints at the security, industry, size exposure, and sector levels. Through this quantitative process of security selection and portfolio diversification, the Adviser expects that the Portfolio will be subject to a low level of absolute risk (as defined by standard deviation of returns) and thus should exhibit low volatility over the long term.

The Fund is intended to be managed in a ''master-feeder'' structure, under which the Fund will invest substantially all of its assets in the Portfolio (*i.e.,* a ''master fund''), which is a separate 1940 Act-registered mutual fund that has an identical investment objective.[13] As a result, the Fund (*i.e.,* the ''feeder fund'') will have an indirect interest in all of the securities owned by the corresponding Portfolio. Because of this indirect interest, the Fund's investment returns should be the same as those of the Portfolio, adjusted for the expenses of the Fund. In extraordinary instances, the Fund reserves the right to make direct investments in securities.

The Adviser will manage the investments of the Portfolio. Under the master-feeder arrangement, and pursuant to the investment advisory agreement between the Adviser and the Trust, investment advisory fees charged at the Portfolio level will be deducted from the advisory fees charged at the Fund level. This arrangement avoids a ''layering'' of fees, *i.e.,* the Fund's total annual operating expenses would be no higher as a result of investing in a master-feeder arrangement than they would be if the Fund pursued its investment objectives directly. In addition, the Fund may discontinue investing through the master-feeder arrangement and pursue its investment objectives directly if the Fund's Board of Trustees (''Board'') determines that doing so would be in the best interests of shareholders.

The exchange-listed and traded equity securities in which the Portfolio would be permitted to invest will be limited to: (1) equity securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing agreement (''CSSA'') with the Exchange; or (2) ''Actively-Traded Securities'' as defined

[9] The Exchange represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[10] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[11] Volatility is a statistical measurement of the magnitude of up and down fluctuations in the value of a financial instrument or index over time. Volatility may result in rapid and dramatic price swings.

[12] Investments in common stock of foreign corporations may also be in the form of American Depositary Receipts (''ADRs''), Global Depositary Receipts (''GDRs'') and European Depositary Receipts (''EDRs'') (collectively ''Depositary Receipts''). Depositary Receipts are receipts, typically issued by a bank or trust company, which evidence ownership of underlying securities issued by a foreign corporation. For ADRs, the depository is typically a U.S. financial institution and the underlying securities are issued by a foreign issuer. For other Depositary Receipts, the depository may be a foreign or a U.S. entity, and the underlying securities may have a foreign or a U.S. issuer. Depositary Receipts will not necessarily be denominated in the same currency as their underlying securities. Generally, ADRs, in registered form, are designed for use in the U.S. securities market, and EDRs, in bearer form, are designated for use in European securities markets. GDRs are tradable both in the United States and in Europe and are designed for use throughout the world. The Portfolio may invest in unsponsored Depositary Receipts. The issuers of unsponsored Depositary Receipts are not obligated to disclose material information in the United States, and, therefore, there may be less information available regarding such issuers and there may not be a correlation between such information and the market value of the Depositary Receipts. Unsponsored Depositary Receipts will not exceed 10% of the Fund's net assets.

[13] The Adviser represents that, in general, the Portfolio (*i.e.,* the master fund) will be where investments will be held and that these investments will primarily consist of equity securities and may, to a lesser extent, include other investments as described under ''Non-Principal Investment Policies'' below. The Fund (*i.e.,* the feeder fund) will invest in shares of the Portfolio and will not invest in investments described under ''Non-Principal Investment Policies,'' but may be exposed to such investments by means of the Fund's investment in shares of the Portfolio. In extraordinary instances, the Fund reserves the right to make direct investments in equity securities and other investments.

in Regulation M (''Reg M'') under the Act that are traded on U.S. and non-U.S. exchanges with last sale reporting.[14]

The Portfolio and Fund do not intend to concentrate their investments in any particular industry. The Portfolio and Fund will look to the Global Industry Classification Standard (''GICS'') Level 3 (Industries) in making industry determinations.[15]

The Portfolio may invest in exchange-traded preferred securities. Preferred securities pay fixed or adjustable rate dividends to investors and have ''preference'' over common stock in the payment of dividends and the liquidation of a company's assets.

2. Non-Principal Investment Policies

In certain situations or market conditions, in order to take temporary defensive positions, the Fund may (either directly or through the Portfolio) temporarily depart from its normal investment policies and strategies, provided that the alternative is consistent with the Fund's investment objective and is in the best interest of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in times of extreme market stress.

According to the Registration Statement, in addition to the principal investments described above, the Portfolio may invest its remaining net assets in other investments, as described below. The investment practices of the Portfolio are the same in all material respects to those of the Fund.

The Portfolio may invest in U.S. Government obligations. U.S. Government obligations are a type of bond. U.S. Government obligations include securities issued or guaranteed as to principal and interest by the U.S. Government, its agencies, or instrumentalities.[16]

The Portfolio may purchase U.S. registered, dollar-denominated bonds of foreign corporations, governments, agencies, and supra-national entities.

The Portfolio may invest in restricted securities. Restricted securities are securities that are not registered under the Securities Act, but which can be offered and sold to ''qualified institutional buyers'' under Rule 144A under the Securities Act. When Rule 144A restricted securities present an attractive investment opportunity and meet other selection criteria, the Portfolio may make such investments depending on the market that exists for the particular security. The Board has delegated to the Adviser the responsibility for determining the liquidity of Rule 144A restricted securities that the Portfolio may invest in.[17]

The Portfolio may conduct foreign currency transactions on a spot (*i.e.*, cash) or forward basis (*i.e.*, by entering into forward contracts to purchase or sell foreign currencies).

The Portfolio may invest in exchange-traded products (''ETPs''), including exchange-traded funds (''ETFs'') registered under the 1940 Act; exchange traded commodity trusts; and exchange-traded notes.[18]

In addition, the Portfolio may invest in the securities of other investment companies, including money market funds and exchange-traded closed-end funds, subject to applicable limitations under Section 12(d)(1) of the 1940 Act.[19] The Portfolio may invest up to 25% of its total assets in one or more ETPs that are qualified publicly traded partnerships (''QPTPs'') and whose principal activities are the buying and selling of commodities or options, futures, or forwards with respect to commodities.[20] A QPTP is an entity that is treated as a partnership for federal income tax purposes, subject to certain requirements. If such an ETP fails to qualify as a QPTP, the income generated from the Portfolio's investment in the ETP may not comply with certain income tests necessary for the Portfolio to qualify as a regulated investment company under Subchapter M of the Internal Revenue Code.

The Portfolio may invest in exchange-traded shares of real estate investment trusts (''REITs'').

The Portfolio may invest in repurchase agreements with commercial banks, brokers, or dealers to generate income from its excess cash balances and to invest securities lending cash collateral. A repurchase agreement is an agreement under which a fund acquires

[14] The Exchange states that Rule 101 under Reg M defines Actively-Traded Securities as securities that have an average daily trading volume of at least $1 million and are issued by an issuer whose common equity securities have a public float value of at least $150 million. Rule 102 includes an analogous definition for actively-traded reference securities.

[15] GICS classifications can be found on the Standard & Poor's Web site at *http://www.us.spindices.com/search/?query=gics+map.*

[16] One type of U.S. Government obligation, U.S. Treasury obligations, are backed by the full faith and credit of the U.S. Treasury and differ only in their interest rates, maturities, and times of issuance. U.S. Treasury bills have initial maturities of one-year or less; U.S. Treasury notes have initial maturities of one to ten years; and U.S. Treasury bonds generally have initial maturities of greater than ten years. Other U.S. Government obligations are issued or guaranteed by agencies or instrumentalities of the U.S. Government including, but not limited to, the Federal National Mortgage Association, the Government National Mortgage Association (''Ginnie Mae''), the Small Business Administration, the Federal Farm Credit Administration, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks, Banks for Cooperatives (including the Central Bank for Cooperatives), the Federal Land Banks, the Federal Intermediate Credit Banks, the Tennessee Valley Authority, the Export-Import Bank of the United States, the Commodity Credit Corporation, the Federal Financing Bank, the National Credit Union Administration, and the Federal Agricultural Mortgage Corporation. Some obligations issued or guaranteed by U.S. Government agencies and instrumentalities, including, for example, Ginnie Mae pass-through certificates, are supported by the full faith and credit of the U.S. Treasury.

[17] In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[18] For purposes of this filing, ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The Portfolio may invest in ETFs managed by the Adviser. The Adviser may receive management or other fees from the ETPs in which the Portfolio or Fund may invest, as well as a management fee for managing the Fund. The ETPs all will be listed and traded in the U.S. on national securities exchanges.

[19] The Fund will invest substantially all of its assets in the Portfolio. The Exchange states that, pursuant to Section 12(d)(1) of the 1940 Act, a fund may invest in the securities of another investment company (the ''acquired company'') provided that the fund, immediately after such purchase or acquisition, does not own in the aggregate: (i) More than 3% of the total outstanding voting stock of the acquired company; (ii) securities issued by the acquired company having an aggregate value in excess of 5% of the value of the total assets of the fund; (iii) securities issued by the acquired company and all other investment companies (other than Treasury stock of the fund) having an aggregate value in excess of 10% of the value of the total assets of the fund; or (iv) in the case of investment in a closed-end fund, more than 10% of the total outstanding voting stock of the acquired company. The Fund may also invest in the securities of other investment companies if such securities are the only investment securities held by the Fund, such as through a master-feeder arrangement. The Fund currently will pursue its investment objective through such an arrangement. To the extent allowed by law, regulation, the Fund's investment restrictions, and the Trust's exemptive relief, the Fund may invest its assets in securities of investment companies that are money market funds, including those advised by the Adviser or otherwise affiliated with the Adviser, in excess of the limits discussed above.

[20] Examples of such entities are the PowerShares DB Energy Fund, PowerShares DB Oil Fund, PowerShares DB Precious Metals Fund, PowerShares DB Gold Fund, PowerShares DB Silver Fund, PowerShares DB Base Metals Fund, and PowerShares DB Agriculture Fund, which are listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 8.200.

a financial instrument (*e.g.*, a security issued by the U.S. government or an agency thereof, a banker's acceptance, or a certificate of deposit) from a seller, subject to resale to the seller at an agreed upon price and date (normally, the next business day). A repurchase agreement may be considered a loan collateralized by securities. The resale price reflects an agreed upon interest rate effective for the period the instrument is held by a fund and is unrelated to the interest rate on the underlying instrument.

The Portfolio may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date. Generally, the effect of such transactions is that a fund can recover all or most of the cash invested in the portfolio securities involved during the term of the reverse repurchase agreement, while in many cases a fund is able to keep some of the interest income associated with those securities.

In addition to repurchase agreements, the Portfolio may invest in short-term instruments, including money market instruments, (including money market funds advised by the Adviser), cash, and cash equivalents, on an ongoing basis to provide liquidity or for other reasons. Money market instruments are generally short-term investments that may include but are not limited to: (i) Shares of money market funds; (ii) obligations issued or guaranteed by the U.S. government, its agencies, or its instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit, bankers' acceptances, fixed time deposits, and other obligations of U.S. and foreign banks (including foreign branches) and similar institutions; (iv) commercial paper rated at the date of purchase ''Prime–1'' by Moody's or ''A–1'' by Standard & Poor's, or if unrated, of comparable quality as determined by the Adviser; [21] (v) non-convertible corporate debt securities (*e.g.*, bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a–7 under the 1940 Act; (vi) short-term U.S. dollar-denominated obligations of foreign banks (including U.S. branches) that, in the opinion of the Adviser, are of comparable quality to obligations of U.S. banks which may be purchased by the Portfolio; and (vii) variable rate demand notes.

3. Investment Restrictions

According to the Registration Statement, the Portfolio and the Fund will be classified as a ''non-diversified'' investment company under the 1940 Act.[22] A non-diversified classification means that the Portfolio or Fund is not limited by the 1940 Act with regard to the percentage of its assets that may be invested in the securities of a single issuer. This means that the Portfolio or Fund may invest a greater portion of its assets in the securities of a single issuer than a diversified fund. Although the Portfolio and Fund will be non-diversified for purposes of the 1940 Act, the Portfolio and Fund intend to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a ''regulated investment company'' for purposes of the Internal Revenue Code of 1986.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Neither the Fund nor the Portfolio will invest in options, futures contracts, or swaps agreements. The Fund's and Portfolio's investments will be consistent with its investment objective and will not be used to enhance leverage.

4. Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[23] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, ETPs, and certain exchange-traded securities underlying the Shares with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, ETPs, and certain exchange-traded securities underlying the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETPs, and certain exchange-traded securities underlying the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[24] FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

5. Information Sharing Procedures

In the proposal, the Exchange states that the Commission requires that, in designing a new derivative securities product, the self-regulatory organization (''SRO'') determine that it has adequate

[21] Commercial paper consists of short-term, promissory notes issued by banks, corporations, and other entities to finance short-term credit needs. These securities generally are discounted but sometimes may be interest bearing.

[22] A ''non-diversified company,'' as defined in Section 5(b)(2) of the 1940 Act, means any management company other than a diversified company (as defined in Section 5(b)(1) of the 1940 Act).

[23] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[24] For a list of the current members of ISG, see *www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

information sharing procedures to detect and deter potential trading abuses,[25] and the Exchange further states that in many, but not all, cases, this requirement is met through listing standards that require the securities underlying a new derivatives securities product to be listed on markets that are members of the ISG or with which the Exchange has a CSSA. For example, the generic listing standards for options on closed-end funds holding foreign stocks, options on foreign index ETFs, and foreign index options require information sharing agreements for the underlying index or portfolio securities.[26] Similarly, the listing standards for stock index warrants contain a specific limitation on the percentage of foreign country securities that are not traded on markets that are not subject to CSSAs.[27]

However, the Exchange points out that the generic listing standards for ETFs based on foreign indexes in NYSE Arca Equities Rule 5.2(j)(3) (Investment Company Units), and for closed-end funds holding foreign securities, do not include specific CSSA requirements.[28] Additionally, the Exchange argues that the American Stock Exchange and the New York Stock Exchange have proposed, and the Commission has approved, the listing or trading pursuant to unlisted trading privileges of shares of many foreign-index-based ETFs that hold securities listed and traded on markets with which the ETF-listing exchange did not have CSSAs.[29]

The Exchange believes that its ability to monitor trading in the Fund would not be impacted by the absence of CSSAs with, or ISG membership of, markets on which ''Actively-Traded Securities'' (as defined in Rule 101(c)(1) of Reg M) [30] are listed or traded. The Exchange states that many established and reputable markets are not members of ISG.[31] The Exchange asserts that such markets have price transparency, regulatory surveillance, liquidity, and last-sale information, as well as numerous other regulatory requirements traditionally associated with national securities exchanges in the United States. However, the Exchange notes that, at times, local laws, such as privacy laws in certain European nations, preclude markets from becoming ISG members or would result in any CSSA entered into being severely limited with respect to the information that can be shared. The Exchange further notes that, while some exchanges in the European Union may not be ISG members, those exchanges have the obligation to share trading data with their national regulator, and these national regulators are parties to sharing agreements with each other. Therefore, while there may be instances where the exchanges in the European Union may not directly share trading data, the Exchange argues that regulators may share information with each other when necessary, to deter and detect market manipulation.

The Exchange further states that, as the global marketplace has evolved and become more interconnected, an issuer's securities may be traded on multiple markets. For example, thanks to harmonized European legislation, and, in particular, the Prospectus Directive of the Markets in Financial Instruments Directive (''MiFID''),[32] issuers wishing to raise capital in the European Union may take advantage of ''passporting'' their prospectus, which allows an issuer to use one prospectus and raise capital across the European Economic Area (EEA).[33] The Exchange notes that one of the consequences of this single prospectus is that an issuer's securities can and often do trade across several markets in the EEA, some of which may be ISG members and others may not.

Additionally, MiFID, introduced in 2007, contains a transaction reporting requirement, under which various markets and trading firms are required to submit transaction reports to an ''Approved Reporting Mechanism.'' MiFID also makes it possible for any transferable security that has been admitted to trading on a regulated market of an ''EU Member State'' to be admitted to trading on other Member States' regulated markets or on any other trading venues. As a result, it is difficult to predict where the liquidity in any particular security will primarily

[25] *See, e.g.*, Securities Exchange Act Release No. 40761 (Dec. 8, 1998) (S7–13–98) (''New Products Release''). The New Products Release was adopted in 1998 to expand the scope of SRO matters that do not constitute proposed rule changes in response to the need for flexibility in regulating new derivative securities products by developing streamlined filing procedures to ease the SROs' regulatory burdens in many circumstances.

[26] *See, e.g.*, NYSE Arca Options Rule 5.3(e) (options on international closed end funds) (requiring the Exchange to have a market information sharing agreement with the primary exchange for each of the securities held by the fund or that such fund be classified as a diversified fund under Section 5(b) of the 1940 Act and that securities of the fund be issued by issuers in five or more countries); NYSE Arca Options Rule 5.3(g) (options on ETFs) (requiring that non-U.S. component securities of the underlying index or portfolio that are not subject to CSSAs not, in the aggregate, represent more than 50% of the weight of the index or portfolio; that component securities for which the primary market is in any one country that is not subject to a CSSA not represent 20% or more of the index weight; and that component securities for which the primary market is in any two countries not subject to CSSAs not represent 33% or more of the index weight); NYSE Arca Options Rule 5.12 (requiring that non-U.S. component securities of the index not subject to CSSAs not, in the aggregate, represent more than 20% of the index weight).

[27] *See, e.g.*, NYSE Arca Equities Rule 8.3 (a)(7) (Listing of Currency and Index Warrants) (Foreign Country Securities or American Depository Receipts thereon that: (A) Are not subject to a comprehensive surveillance agreement, and (B) have less than 50% of their global trading volume (in dollar value) within the United States, shall not, in the aggregate, represent more than 20% of the weight of the index, unless such index is otherwise approved for warrant or option trading). *See, e.g.*, Securities Exchange Act Release Nos. 31121 (Aug. 28, 1992) (SR–PSE–92–09 and SR–PSE–92–10) (order granting accelerated approval of proposed rule changes relating to listing index warrants based on the FT–SE Eurotrack 200 Index and the Eurotop 100 Index); 30462 (Mar. 11, 1992) (SR–Amex 91–10, SR–NYSE–91–13, SR–CBOE–91–09, SR–CBOE–91–13) (order approving proposed rule changes relating to listing of index options and index warrants based on the FT–SE Eurotrack 200 Index); 28544 (Oct. 17, 1990) (SR–Amex–90–08; SR–NYSE–90–36; SR–PHLX–90–25; SR–PSE–90–18) (order approving proposed rule changes relating to the listing of index warrants based on the CAC–40 Index).

[28] *See, e.g.*, Securities Exchange Act Release No. 54739 (Nov. 9, 2006) (SR–Amex–2006–78) (stating that CSSAs are not required in connection with listing of ETFs under the generic listing criteria of American Stock Exchange Rule 1000A given that the generic listing criteria otherwise require minimum levels of liquidity, concentration, and pricing transparency for index components).

[29] *See, e.g.*, Securities Exchange Act Release Nos. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (SR–Amex–98–49) (order approving listing and trading of six series of World Equity Benchmark Shares based on foreign stock indexes); 42786 (May 15, 2000), 65 FR 33586 (May 24, 2000) (SR–Amex–99–49) (order partially approving listing and trading of series of the iShares Trust based on foreign stock indexes); 44900 (Oct. 25, 2001), 66 FR 55712 (Nov. 2, 2001) (SR–Amex–2001–45) (order approving listing and trading of seven series of funds of iShares, Inc. based on foreign indexes); 36947 (Mar. 8, 1996) (SR–Amex–95–43) (order approving listing of Index Fund Shares based on 18 foreign indexes); 52178 (July 29, 2005) (SR–NYSE–2005–41 (order approving listing of iShares MSCI EAFE Growth and iShares MSCI EAFE Value Funds); 52816 (Nov. 21, 2005) (SR–NYSE–2005–70) (order approving listing of iShares MSCI Index Funds). A list of ISG members is available at *https://www.isgportal.org/isgPortal/public/members.htm*.

[30] 17 CFR 242.101(c)(1).

[31] Non-ISG member exchanges include: Abu Dhabi Securities Exchange; Athens Exchange; BM&FBOVESPA S.A.; BME Spanish Exchanges; Bolsa Mexicana de Valores; Bourse de Luxembourg; Deutsche Börse AG; Euronext Brussels N.V./S.A.; Euronext Lisbon—Sociedade Gestora de Mercados Regulamentados, S.A.; Euronext Paris S.A.; Indonesia Stock Exchange; Irish Stock Exchange; Johannesburg Stock Exchange; Moscow Exchange; Philippine Stock Exchange; Saudi Stock Exchange; Shanghai Futures Exchange; Shenzhen Stock Exchange; SIX Swiss Exchange; Stock Exchange of Thailand; Taiwan Futures Exchange; Taiwan Stock Exchange; Tel-Aviv Stock Exchange; The Egyptian Exchange; Wiener Börse AG; and Zhengzhou Commodity Exchange.

[32] Information regarding the Prospectus Directive is available from the European Commission at *http://ec.europa.eu/internal_market/securities/prospectus/index_en.htm*.

[33] *See* The Forum of European Securities Commissions [FESCO], *A ''European Passport'' For Issuers* at 4–8, Fesco/99–098e (May 10, 2000), *available at http://www.esma.europa.eu/system/files/99_098e.PDF*.

reside. Moreover, the MiFID best execution requirement [34] may require an executing broker to trade on markets that are not ISG members. The Exchange argues that these developments would make it challenging for the Fund to limit the trading of foreign securities on markets that are members of ISG or with which the Exchange has a CSSA.

In addition, the Exchange believes that it is not necessary to its ability to detect and deter manipulation in Shares of the Fund for equity securities in which the Fund invests to be listed and traded on markets that are members of ISG or with which the Exchange has a CSSA, provided that such equity securities are Actively-Traded Securities. As the Commission noted in adopting Reg M, Actively-Traded Securities are less likely to be manipulated because the costs of such manipulation is high, aberrations in price are more likely to be discovered and quickly corrected, and such securities are generally traded on markets with high levels of transparency and surveillance. For this reason, the Exchange asserts that Actively-Traded Securities were excepted from the prophylactic provisions of Rule 101 of Reg M [35] and, thus, would not be subject to the restrictions imposed upon distribution participants or issuers and selling security holders during the restricted period, as those terms are defined in Reg M.

The Exchange argues that, as the Commission recognized in adopting Reg M, the detection of manipulation of Actively-Traded Securities is aided substantially by the widespread coverage by analysts, news outlets, investors, and other market participants around the world of these securities.[36] This close scrutiny and increased transparency of the secondary markets means that unusual market activity is likely to be observed and quickly corrected.

Further, that Exchange argues that, as also noted by the Commission in adopting Reg M, because the costs associated with manipulating an Actively-Traded Security will be higher, the likelihood of manipulation of Actively-Traded Securities is low. This potential for improper activity in an Actively-Traded Security to be used to manipulate, or otherwise impact, trading in the Shares of the Fund is further diluted by the fact that a single Actively-Traded Security represents only part of the value of the Fund. This limited impact is guaranteed by diversification requirements applicable to the Fund in the Exchange's listing rules and the Internal Revenue Code, which requires certain diversification to qualify as a regulated investment company (''RIC'').[37]

The Exchange also notes that other provisions of the securities laws encourage disparate treatment for active, large capitalization securities. In its no action letter [38] to FINRA in 2012 regarding Rule 15c3–1 under the Act (''Net Capital Rule''),[39] the Commission expanded the universe of foreign equity securities that were deemed to have a ready market.[40] Similar to the exemptions afforded Actively-Traded Securities, the beneficial attributes of liquidity and size were once again acknowledged and formed the basis for the Commission's interpretation of this fundamental customer protection provision of the securities laws.[41]

The Exchange asserts that permitting the Fund to invest in Actively-Traded Securities, even if they trade on markets that are not member of ISG, will allow investors to benefit from the Fund's portfolio managers' expertise as well as potentially reducing costs to shareholders. In addition, the Exchange asserts that investing directly in Actively-Traded Securities would, in many cases, be a less expensive alternative than other investments used by the Fund's portfolio managers when they are restricted to trading in markets that are members of ISG or with which the Exchange has a CSSA. For example, investing in international index ETFs [42] is a common way fund managers provide investors with exposure to regions whose markets are not members of ISG. These international index ETFs can be a less efficient and less targeted proxy for direct investment in foreign security components of those indexes. The fees imbedded in such ETFs would be borne directly by a fund and indirectly by investors in shares of a fund. Thus, the Exchange concludes that the ability of the Fund to directly invest in Actively-Traded Securities listed or traded on markets that may not be members of ISG or with which the Exchange has a CSSA would be a less expensive alternative for the Fund's portfolio managers, which lower costs to the benefit of shareholders of the Fund.

[34] *See generally* The Committee of European Securities Regulators [CESR], *Best Execution Under MiFID; Questions and Answers*, CESR/07–320 (May 2007), *available at http://www.cmvm.pt/CMVM/Cooperacao%20Internacional/Docs_ESMA_Cesr/Documents/07_320.pdf* (MiFID's best execution regime requires investment firms to take all reasonable steps to obtain the best possible result for their clients, taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to order execution. CESR considers this requirement to be of a general and overarching nature.); *see also* The Committee of European Securities Regulators (CESR), *Best Execution Under MiFID; Public Consultation,* CESR/07–050b (Feb. 2007), *available at http://www.esma.europa.eu/system/files/07_050b.pdf*; Financial Services Authority (FSA), *Implementing MiFID's Best Execution Requirement* (May 2006), *available at http://www.fsa.gov.uk/pubs/discussion/dp06_03.pdf.*

[35] Rule 102 similarly excepts from its provisions actively-traded reference securities.

[36] *See* Release Nos. 33–7375; 34–38067; IC 22412: International Series Release Nos. 1039; File No. S7–11–96, 62 FR 520 (Jan. 3, 1997) (Anti-manipulation Rules concerning Securities Offerings), at 62 FR 527.

[37] *See* 26 U.S.C. 851.

[38] *See* Letter from Michael A. Macchiaroli, Associate Director, Division of Trading and Markets (''Division''), Commission, to Grace B. Vogel, Executive Vice President, FINRA (November 28, 2012) (the ''Ready Market No-Action Letter'') *available at http://www.sec.gov/divisions/marketreg/mr-noaction/2012/finra-112812.pdf.*

[39] The primary purpose of the Net Capital Rule is to protect customers and other market participants from broker-dealer failures by ensuring that broker-dealers maintain sufficient liquid assets to satisfy their liabilities and to provide a cushion in excess of liabilities to cover select risks in the event of liquidation. The Net Capital Rule enhances investor/customer confidence in the financial integrity of broker-dealers and the securities market.

[40] Paragraph (c)(11)(i) of the Net Capital Rule states that the term ''ready market'' shall include ''a market in which there exists independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for a particular security almost instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom.'' The ready market designation implies that for the purposes of broker-dealer net capital calculations, securities with such a designation held by the broker-dealer would be subject to a 15% haircut as opposed to a 100% haircut for non-marketable securities.

[41] In the Ready Market No Action Letter, the Division stated that it would not recommend enforcement action to the Commission if a broker-dealer treats an equity security of a foreign issuer as having a ready market under Rule 15c3–1(c)(11) and subject to haircuts under paragraph (c)(2)(vi)(J), if the following conditions are met: (1) The security is listed for trading on a foreign securities exchange located within a country that is recognized on the FTSE World Index, where the security has been trading on that exchange for at least the previous 90 days; (2) Daily quotations for both bid and ask or last sale prices for security provided by the foreign securities exchange on which the security is traded are continuously available to broker-dealers in the United States, through an electronic quotation system; (3) The median daily trading volume (calculated over the preceding 20 business day period) of the foreign equity security on the foreign securities exchange on which the security is traded is either at least 100,000 shares or $500,000; and (4) The aggregate unrestricted market capitalization in shares of such security exceeds $500 million over each of the preceding 10 business days.

[42] As noted above, international index ETFs are listed under NYSE Arca Equities Rule 5.2(j)(3), which does not include a requirement that index components trade on markets that are members of ISG or with which the Exchange has a CSSA.

## III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2014–100 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [43] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[44] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [45]

As discussed above, as part of the Fund's principal investment strategy, the exchange-listed and traded equity securities in which the Portfolio would be permitted to invest would include ''Actively-Traded Securities,'' as defined in Reg M under the Act, that are traded on U.S. and non-U.S. exchanges with last sale reporting.[46] The proposed rule change would permit the listing and trading of an actively managed ETF based on a portfolio of equity securities that may trade on exchanges or markets that are neither members of ISG nor parties to a CSSA with the Exchange, and the Commission believes that proceedings are appropriate to consider, among other matters, whether the Exchange would be able to obtain the information necessary to detect and deter market manipulation, illegal trading, and other abuses involving the new derivative securities product, including trading in the new derivative securities product and its underlying securities.

[43] 15 U.S.C. 78s(b)(2)(B).

[44] 15 U.S.C. 78s(b)(2)(B).

[45] 15 U.S.C. 78f(b)(5).

[46] *See supra* note 14.

## IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[47]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by January 20, 2015. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 3, 2015.

The Commission asks that commenters address the sufficiency of the Exchange's statements in the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the statements of the Exchange contained in the Notice,[48] including the statements made in connection with information sharing procedures with respect to certain non-U.S. equity security holdings, the Exchange's arguments regarding the applicability of the definition of ''Actively-Traded Securities'' under Reg M with respect to the securities in which an ETF may invest, and any other issues raised by the proposed rule change.

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–2014–100 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–NYSEArca–2014–100. 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 these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–100 and should be submitted on or before January 20, 2015. Rebuttal comments should be submitted by February 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2014–30440 Filed 12–29–14; 8:45 am]

**BILLING CODE 8011–01–P**

[47] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[48] *See* Notice, *supra* note 3.

[49] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73913; File No. SR–NYSEMKT–2014–95]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Amending Rule 13—Equities and Related Rules Governing Order Types and Modifiers, as modified by Partial Amendment No. 1

December 22, 2014.

On October 31, 2014, NYSE MKT LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 13—Equities and other Exchange rules governing order types and order modifiers. The proposed rule change was published in the **Federal Register** on November 20, 2014.[3] On November 14, 2014, the Exchange submitted Partial Amendment No. 1 to the Commission and filed the Partial Amendment No. 1 to the public comment file.[4] The Commission has received no other comment on the proposal.

Section 19(b)(2) of the Act [5] provides that, within 45 days of the publication of the notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Partial Amendment No. 1. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates February 18, 2015, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEMKT–2014–95).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2014–30439 Filed 12–29–14; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73595 (November 14, 2014), 79 FR 69153.

[4] *See* letter from Sudhir Bhattacharyya, Vice President, New York Stock Exchange, to Kevin M. O'Neill, Deputy Secretary, Commission, dated November 14, 2014.

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73910; File No. SR–NYSEMKT–2014–102]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rules Regarding Trade Nullification and Price Adjustment

December 22, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend exchange rules regarding trade nullification and price adjustment. 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 is proposing to add Rule 966NY, ''Trade Nullification and Price Adjustment Procedure.'' [3] As proposed, Rule 966NY would allow for transactions to be nullified if both parties to the transaction agree to the nullification and allow the price of executions to be adjusted if the price adjustment is agreed to by both parties to the transaction and authorized by the Exchange.[4] The Exchange is also proposing to make other conforming administrative changes to streamline the rules governing this subject with the Exchange's rules.

Background

Currently, pursuant to Commentary .02 of Rule 965NY, the Exchange allows for parties to agree to nullify an execution. Commentary .02 of Rule 965NY also states that once both parties agree to the trade nullification, one party must ''promptly notify the Exchange for dissemination of cancellation information to the Options Price Reporting Authority.'' In addition, the Exchange currently allows for a mutual price adjustment for trades that meet the obvious error (or catastrophic error) requirements pursuant to Exchange Rule 975NY if those mutual agreements are done within specific timeframes.[5] The Exchange is now proposing to relocate the aforementioned trade nullification language and add a provision to allow parties to mutually adjust prices of executions outside of those done in obvious error. The Exchange's proposal is based upon similar rules of the Chicago Board Options Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that there are efforts by the exchanges to create a uniform trade nullification and adjustment rule. Should the uniform rule be approved and effective, the Exchange will amend its rules appropriately.

[4] The Exchange notes that, as proposed, Rule 966NY would only apply to trades that were executed on the Exchange and, as such, any orders that were either fully or partially routed to, or executed, on another exchange would not be subject to the proposed Rule 966NY.

[5] *See* Rule 975NY(a)(3) and (7) and 975NY(d)(3).

(''CBOE'') and Miami International Securities Exchange, LLC (''MIAX'').[6]

Proposed Rule 966NY

The Exchange is proposing to add Rule 966NY, ''Trade Nullification and Price Adjustment Procedure,'' which would: (a) Allow for any trades on the Exchange to be nullified if both parties to the trade agree to such nullification, and (b) allow for prices of executions to be adjusted if the price adjustment is agreed upon by both parties to the trade and authorized by the Exchange.[7]

As stated above, the Exchange currently allows for trades to be nullified based upon mutual agreement.[8] With the proposed addition of Rule 966NY, the Exchange is only renumbering and relocating this provision and is not proposing a substantive change to the rule itself. The Exchange believes that having the provision as a standalone rule would make it easier for ATP Holders to locate. In addition, the Exchange believes this administrative change would streamline the provisions surrounding this notion to put in one place.

The Exchange is also proposing to add a provision allowing ATP Holders to mutually agree to adjust a price of an execution. The Exchange believes this provision is necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge transactions in other markets, including securities and futures, many ATP Holders, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. In addition, the Exchange believes it is in the nature of a fair and orderly market to allow for price adjustments rather than only cancellations because an adjustment would result in the least amount of disruption to the overall market. The Exchange also notes that current Exchange rules allow for prices of trades to be adjusted at the consent of both parties if such transactions are within the current obvious error and catastrophic error provisions.[9] The Exchange is now proposing to merely allow this practice for any trade.

As proposed, Rule 966NY expressly states that trades may be subject to nullification or price adjustment only if such trades are authorized by the Exchange. The Exchange notes that this process is very similar to the process ATP Holders follow today for trade nullification based upon mutual consent. As described in more detail above, Commentary .02 of current Rule 965NY allows two parties to agree to a trade nullification and ''notify the Exchange for dissemination of cancellation information to the Options Price Reporting Authority.'' The Exchange is only slightly changing this procedure by expressly requiring Exchange authorization prior to the effectuation of such nullification or mutual price adjustment. The Exchange would only authorize a proposed nullification or adjustment if the Exchange received verification from both parties to the trade that a mutual agreement has been made.[10] In addition, prior to an authorization for a mutual price adjustment, the Exchange would ensure the agreed upon price would have been permissible and in compliance with any applicable rules of the Exchange and Securities and Exchange Commission, as amended, at the time the original transaction was executed.[11] Finally, the proposed rule would state that the format and information required by the Exchange for this submission would be released by the Exchange via Trader Update. As such, prior to Rule 966NY becoming operative, the Exchange would provide ATP Holders with specific requirements via an Exchange-issued Trader Update. The Trader Update would, among other things, state specific timeframes required for requests and the format in which the requests would be accepted by the Exchange.

Administrative Changes

Finally, the Exchange is proposing to make administrative conforming changes to ensure Exchange rules on the subject are consistent. More specifically, the Exchange is proposing to delete Commentary .02 of Rule 965NY. The Exchange believes that deleting current Commentary .02 to Exchange Rule 965NY would avoid any confusion with the proposed Rule 966NY.

Conclusion

To conclude, the Exchange believes that the proposed changes are in furtherance of the Act because the proposed Rule 966NY will allow ATP Holders to agree to nullify transactions or adjust prices of transactions to maintain a fair and orderly market. As stated above, the Exchange intends to release a Trade [sic] Update to announce the implementation of the Rule and other specifics surrounding the procedures of the implementation. In addition, prior to implementation, the Exchange will ensure it has proper policies and procedures in place to correctly administer the Rule.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[12] of the Act, in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

More specifically, the Exchange believes that the proposed changes are consistent with the Act as they are designed to promote just and equitable principles and protect investors and the public interest. In particular, the Exchange believes the proposed change to move the provision authorizing parties to mutually agree to nullify a

[6] *See* CBOE Rule 6.19 and Securities Exchange Act Release No. 72970 (September 3, 2014), 79 FR 53498 (September 9, 2014) (SR–CBOE–2014–066) and MIAX Rule 531 and Release No. 73463 (October 29, 2014), 79 FR 65445 (November 4, 2014) (SR–MIAX–2014–54).

[7] *See* note 5 *supra.*

[8] *See* Commentary .02 of Rule 965NY.

[9] The Exchange notes that no changes are being proposed to the procedures for nullification or adjustment of a trade by mutual agreement in the Exchanges' obvious error and catastrophic error rules. *See* note 5 *supra.* With the effectiveness of proposed Rule 966NY, ATP Holders would have two options to choose from in order to have their trades nullified or adjusted by mutual agreement: (i) Request under the procedures of Rule 975NY (including the timeframes); or (ii) request under the procedures of Proposed Rule 966NY which requires the authorization of the Exchange prior to the nullification or adjustment. The Exchange believes both provisions are complimentary [sic] in that they provide protections in different situations under procedures that are correspondingly appropriate based on the situation in which a nullification or an adjustment is requested.

[10] Upon authorization, the Exchange will continue to report any price adjustment or trade nullification to the Options Price Reporting Authority.

[11] Specifically, the Exchange would ensure that the mutually-agreed upon price would not have traded through resting interest on the Exchange or would have been in violation of Rule 991NY at the time of the initial execution.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

trade to a separate, stand-alone rule protects investors by eliminating confusion and making the provision more clear. Because options trades are used to hedge transactions in other markets, including securities and futures, many market participants would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. In addition, the Exchange believes it is in the nature of a fair and orderly market to allow for price adjustments rather than only cancellations because an adjustment would result in the least amount of disruption to the overall market. Further, the Exchange believes that, harmonizing its nullification and adjustment rules with other options markets would promote just and equitable principles of trade by better allowing the market participants to be treated similarly across exchanges. The Exchange also believes that the other administrative changes would remove impediments to and perfect the mechanism of a fair and orderly market as they are merely trying to create more transparency in the Exchange's rules. Finally, the Exchange does not believe that the proposed changes are unfairly discriminatory because they will be applied to all ATP Holders equally.

*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 proposed rule change is not designed to address any aspect of competition, whether between the Exchange and its competitors, or among market participants. Instead, the proposed rule change is designed to adopt the nullification and adjustment of trades on similar terms to that of other options exchanges.[14]

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change 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) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–102 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–102. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–102, and should be submitted on or before January 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2014–30441 Filed 12–29–14; 8:45 am]

BILLING CODE 8011–01–P

[14] *See* note 7 *supra.*

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73908; File No. SR–NYSEArca–2014–85]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of Shares of the PIMCO Low Duration Investment Grade Corporate Bond Active Exchange-Traded Fund Under NYSE Arca Equities Rule 8.600

December 22, 2014.

**I. Introduction**

On October 23, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the PIMCO Low Duration Investment Grade Corporate Bond Active Exchange-Traded Fund (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on November 14, 2014.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73556 (Nov. 7, 2014), 79 FR 68330 (''Notice'').

## II. Description of the Proposal

NYSE Arca proposes to list and trade Shares of the Fund under NYSE Arca Equities 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by PIMCO ETF Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[4] Pacific Investment Management Company LLC will be the investment manager to the Fund (''PIMCO'' or ''Adviser),[5] and PIMCO Investments LLC will serve as the distributor for the Fund. State Street Bank & Trust Co. will serve as the custodian and transfer agent for the Fund.

The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including other portfolio holdings and investment restrictions.[6]

### *A. Principal Investments of the Fund*

The Fund will seek to maximize total return, consistent with prudent investment management, by investing under normal circumstances[7] at least 80% of its assets in a diversified portfolio of investment grade corporate ''Fixed Income Instruments'' (as described in more detail below) of varying maturities, which may be represented by certain derivative instruments, as described in more detail below (''80% Policy''). Corporate Fixed Income Instruments will be: Corporate debt securities of U.S. and non-U.S. issuers, including convertible securities and corporate commercial paper;[8] inflation-indexed bonds;[9] bank capital securities;[10] trust preferred securities; and loan participations and assignments.[11]

The average portfolio duration of the Fund normally will vary from zero to 4 years based on PIMCO's forecast for interest rates.[12] In furtherance of the Fund's 80% Policy, or with respect to the Fund's other investments, the Exchange represents that the Fund may invest in derivative instruments, subject to applicable law and any other restrictions described herein.

According to the Exchange, the Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.[13] The Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).[14]

In selecting investments for the Fund, PIMCO will develop an outlook for interest rates, currency exchange rates, and the economy; analyze credit and call risks; and use other investment selection techniques. The proportion of the Fund's assets committed to investments in securities with particular characteristics (such as quality, sector, interest rate, or maturity) will vary based on PIMCO's outlook for the U.S. economy and the economies of other countries in the world, the financial markets, and other factors.

According to the Exchange, in seeking to identify undervalued currencies, PIMCO may consider many factors, with respect to the Fund, including but not limited to, longer-term analysis of relative interest rates, inflation rates, real exchange rates, purchasing power parity, trade account balances, and current account balances, as well as other factors that influence exchange rates such as flows, market technical trends, and government policies. With respect to fixed income investing, PIMCO will attempt to identify areas of the bond market that are undervalued relative to the rest of the market. PIMCO will identify these areas by grouping fixed income investments into sectors such as money markets, governments, corporates, mortgages, asset-backed, and international. Sophisticated proprietary software will then assist in evaluating sectors and pricing specific investments. Once investment opportunities are

[4] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). The Exchange represents that, on June 17, 2014, the Trust filed an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (''1933 Act'') and the 1940 Act relating to the Fund (File Nos. 333–155395 and 811–22250) (''Registration Statement''). In addition, the Exchange represents that the Trust has obtained from the Commission certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812–13571).

[5] The Exchange represents that the Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer, and will implement a ''fire wall'' with respect to its broker-dealer affiliate regarding access to information concerning the composition or changes to the Fund's portfolio. The Exchange further represents that, if PIMCO elects to hire a sub-adviser for the Fund that is registered as a broker-dealer or is affiliated with a broker-dealer, such sub-adviser will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate, as applicable, regarding access to information concerning the composition or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Adviser or any new adviser or sub-adviser, as the case may be, will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.

[6] The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value (''NAV''), distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

[7] With respect to the Fund, the term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[8] The Exchange represents that, with respect to the Fund, while non-emerging markets corporate debt securities (excluding commercial paper) generally must have $100 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for the Fund, at least 80% of issues of such securities held by the Fund must have $100 million or more par amount outstanding at the time of investment. *See also infra* note 30 (regarding emerging market corporate debt securities).

[9] Inflation-indexed bonds (other than municipal inflation-indexed bonds and certain corporate inflation-indexed bonds) are fixed income securities whose principal value is periodically adjusted according to the rate of inflation (*e.g.,* Treasury Inflation Protected Securities). Municipal inflation-indexed securities are municipal bonds that pay coupons based on a fixed rate plus the Consumer Price Index for All Urban Consumers. With regard to municipal inflation-indexed bonds and certain corporate inflation-indexed bonds, the inflation adjustment is reflected in the semi-annual coupon payment.

[10] There are two common types of bank capital: Tier I and Tier II. Bank capital is generally, but not always, of investment grade quality. Tier I securities are typically exchange-traded and often take the form of trust preferred securities. Tier II securities are commonly thought of as hybrids of debt and preferred stock. Tier II securities are typically traded over-the-counter, are often perpetual (with no maturity date), callable and, under certain conditions, allow for the issuer bank to withhold payment of interest until a later date. However, such deferred interest payments generally earn interest.

[11] According to the Exchange, the Fund may invest in fixed- and floating-rate loans, which investments generally will be in the form of loan participations and assignments of portions of such loans.

[12] Duration is a measure used to determine the sensitivity of a security's price to changes in interest rates. The longer a security's duration, the more sensitive it will be to changes in interest rates.

[13] The Fund may make short sales of securities to offset potential declines in long positions in similar securities and increase the flexibility of the Fund, as well as for investment return, and as part of a risk arbitrage strategy.

[14] A dollar roll is similar except that the counterparty is not obligated to return the same securities as those originally sold by the Fund but only securities that are ''substantially identical.''

identified, PIMCO will shift assets among sectors depending upon changes in relative valuations, credit spreads, and other factors.

*B. Other (Non-Principal) Investments of the Fund*

The Exchange represents that the non-principal investments listed below would consist of investments that are not included in the Fund's 80% Policy. Such assets may be invested in the Fixed Income Instruments and other instruments, as described below.

According to the Exchange, with respect to the Fund's investments, Fixed Income Instruments will include any one or more of the following: securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises (''U.S. Government Securities''); mortgage-backed and other asset-backed securities; [15] structured notes, including hybrid or ''indexed'' securities and event-linked bonds; [16] delayed funding loans and revolving credit facilities; bank certificates of deposit, fixed time deposits and bankers' acceptances; repurchase agreements on Fixed Income Instruments and reverse repurchase agreements on Fixed Income Instruments; debt securities issued by states or local governments and their agencies, authorities, and other government-sponsored enterprises; obligations of non-U.S. governments or their subdivisions, agencies, and government-sponsored enterprises; obligations of international agencies or supranational entities.

According to the Exchange, the Fund may gain exposure to the real estate sector by investing in over-the-counter (''OTC'') real estate-linked derivatives,[17] exchange-traded and OTC real estate investment trusts (''REITs''), and exchange traded common, exchange-traded and OTC preferred, and exchange-traded and OTC convertible securities of issuers in real estate-related industries.[18]

The Fund may invest in variable and floating rate securities that are not corporate Fixed Income Instruments. The Fund may invest in floaters and inverse floaters that are not corporate Fixed Income Instruments.

The Fund may invest in trade claims,[19] privately placed and unregistered securities, and exchange-traded and OTC-traded structured products,[20] including credit-linked securities [21] and commodity-linked notes. The Fund also may invest in Brady Bonds.

The Exchange represents that the Fund may enter into repurchase agreements on instruments other than corporate Fixed Income Instruments, in addition to repurchase agreements on corporate Fixed Income Instruments mentioned above, in which the Fund purchases a security from a bank or broker-dealer, which agrees to purchase the security at the Fund's cost plus interest within a specified time. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may enter into reverse repurchase agreements on instruments other than corporate Fixed Income Instruments, in addition to reverse repurchase agreements on corporate Fixed Income Instruments mentioned above, subject to the Fund's limitations on borrowings.[22] The Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Board to cover its obligations under reverse repurchase agreements.

The Exchange represents that the Fund may invest only up to 10% of its total assets in preferred stocks, convertible securities, common stocks, and other equity-related securities, and that this limitation will not include real estate-related investments, such as REITs or investments in common, preferred, or convertible securities of issuers in real estate-related industries.[23]

The Exchange represents that the Fund may invest up to 20% of its total assets in structured notes, including hybrid or ''indexed'' securities and

[15] According to the Exchange, mortgage-related and other asset-backed securities include collateralized mortgage obligations (''CMOs''), commercial mortgage-backed securities, mortgage dollar rolls, CMO residuals, stripped mortgage-backed securities, and other securities that directly or indirectly represent a participation in, or are secured by and payable from, mortgage loans on real property. A to-be-announced (''TBA'') transaction is a method of trading mortgage-backed securities. In a TBA transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount, and price. The actual pools delivered generally are determined two days prior to the settlement date.

[16] The Exchange represents that the Fund may obtain event-linked exposure by investing in ''event-linked bonds'' or ''event-linked swaps'' or by implementing ''event-linked strategies.'' Event-linked exposure results in gains or losses that typically are contingent, or formulaically related to defined trigger events, which include hurricanes, earthquakes, weather-related phenomena, or statistics relating to such events. Some event-linked bonds are commonly referred to as ''catastrophe bonds.'' If a trigger event occurs, the Fund may lose a portion or its entire principal invested in the bond or notional amount on a swap.

[17] Real estate-linked derivatives are derivative instruments that are tied to real estate, such as derivatives (*e.g.,* swaps or options) on real-estate related indices or specific real-estate related companies. The value and risks associated with real estate-linked derivative instruments are generally similar to those associated with direct ownership of real estate.

[18] *See infra* note 23 and accompanying text.

[19] Trade claims are non-securitized rights of payment arising from obligations that typically arise when vendors and suppliers extend credit to a company by offering payment terms for products and services. If the company files for bankruptcy, payments on these trade claims stop and the claims are subject to compromise along with the other debts of the company. Trade claims may be purchased directly from the creditor or through brokers.

[20] The Fund invest in structured products, including instruments such as credit-linked securities. For example, a structured product may combine a traditional stock, bond, or commodity with an option or forward contract. Generally, the principal amount, amount payable upon maturity or redemption, or interest rate of a structured product is tied (positively or negatively) to the price of some commodity, currency, or securities index or another interest rate or some other economic factor. The interest rate or (unlike most fixed income securities) the principal amount payable at maturity of a structured product may be increased or decreased, depending on changes in the value of the benchmark. An example of exchange-traded structured products would be exchange-traded notes or ETNs, such as those listed and traded under NYSE Arca Equities Rule 5.2(j)(6).

[21] Credit-linked securities are generally a basket of derivative instruments, such as credit default swaps or interest rate swaps. Like an investment in a bond, investments in credit-linked securities represent the right to receive periodic income payments (in the form of distributions) and payment of principal at the end of the term of the security. However, these payments are conditioned on the trust's receipt of payments from, and the trust's potential obligations to, the counterparties to the derivative instruments and other securities in which the trust invests.

[22] With respect to the Fund, a reverse repurchase agreement involves the sale of a security by the Fund and its agreement to repurchase the instrument at a specified time and price.

[23] Convertible securities are generally preferred stocks and other securities (including fixed income securities and warrants) that are convertible into or exercisable for common stock at a stated price or rate. Equity-related investments may include investments in small-capitalization (''small-cap''), mid-capitalization (''mid-cap'') and large-capitalization (''large-cap'') companies. According to the Exchange, with respect to the Fund, a small-cap company will be defined as a company with a market capitalization of up to $1.5 billion, a mid-cap company will be defined as a company with a market capitalization of between $1.5 billion and $10 billion and a large-cap company will be defined as a company with a market capitalization above $10 billion. Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities, including stocks into which a convertible security is converted, whose principal market is not a member of the Intermarket Surveillance Group (''ISG'') or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement (''CSSA''). Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a CSSA.

event-linked bonds. Additionally, the Fund may invest up to 15% of its total assets in high yield securities (''junk bonds'') rated below BBB− (with a minimum level of B− at purchase) by Standard & Poor's Ratings Services (''S&P''), or equivalently rated by Moody's Investors Service, Inc. (''Moody's'') or Fitch, Inc. (''Fitch''), or, if unrated, determined by PIMCO to be of comparable quality (except that within such limitation, the Fund may invest in mortgage-related securities rated below B−).[24]

*C. Investments in Derivative Instruments*

With respect to the Fund, the Exchange represents that derivative instruments will include forwards;[25] exchange-traded and OTC options contracts; exchange-traded futures contracts; exchange-traded and OTC swap agreements; exchange-traded options on futures contracts; and OTC options on swap agreements.[26] The Fund may, but is not required to, use derivative instruments for risk management purposes or as part of its investment strategies.[27]

According to the Exchange, the Fund will typically use derivative instruments as a substitute for taking a position in the underlying asset and as part of a strategy designed to reduce exposure to other risks, such as interest rate or currency risk. The Fund may also use derivative instruments to enhance returns. To limit the potential risk associated with such transactions, the Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Trust's Board of Trustees (''Board'') and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. In addition, the Exchange represents that the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.[28] According to the Exchange, the Fund also can use derivatives to increase or decrease credit exposure. Index credit default swaps (CDX) can be used to gain exposure to a basket of credit risk by ''selling protection'' against default or other credit events, or to hedge broad market credit risk by ''buying protection.'' Single name credit default swaps (CDS) can be used to allow the Fund to increase or decrease exposure to specific issuers, saving investor capital through lower trading costs. The Fund can use total return swap contracts to obtain the total return of a reference asset or index in exchange for paying a financing cost. A total return swap may be much more efficient than buying underlying securities of an index, potentially lowering transaction costs.

*D. Investment Restrictions*

According to the Exchange, if PIMCO believes that economic or market conditions are unfavorable to investors or that market conditions are not normal, PIMCO may temporarily invest up to 100% of the Fund's assets in certain defensive strategies, including holding a substantial portion of the Fund's assets in cash, cash equivalents, or other highly rated, short-term securities, including securities issued or guaranteed by the U.S. government, its agencies, or instrumentalities. As noted above, the Fund may invest without limit, for temporary or defensive purposes, in such instruments if PIMCO deems it appropriate to do so.

The Exchange represents that the Fund may invest in, to the extent permitted by Section 12(d)(1)(A) of the 1940 Act, other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other exchange-traded funds, provided that the Fund's investment in units or shares of investment companies and other open-end collective investment vehicles will not exceed 10% of the Fund's total assets. The Fund may invest its securities lending collateral in one or more money market funds to the extent permitted by Rule 12d1–1 under the 1940 Act, including series of PIMCO Funds.

The Exchange represents that the Fund may invest up to 20% of its total assets in mortgage-related and other asset backed securities, although this 20% limitation will not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities. The Fund may invest up to 20% of its total assets in securities denominated in foreign currencies, and may invest beyond this limit in U.S. dollar denominated securities of foreign issuers. The Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 10% of its total assets.[29] The Fund may engage in foreign currency transactions either on a spot (cash) basis at the rate prevailing in the currency exchange market at the time or through forward currency contracts. The Exchange represents that the Fund may invest up to 20% of its total assets in securities and instruments of issuers economically tied to emerging market countries.[30]

[24] With respect to the Fund, securities rated Ba or lower by Moody's, or equivalently rated by S&P or Fitch, are sometimes referred to as ''high yield securities'' or ''junk bonds,'' while securities rated Baa or higher are referred to as ''investment grade.'' Unrated securities may be less liquid than comparable rated securities and involve the risk that the Fund's portfolio manager may not accurately evaluate the security's comparative credit rating. To the extent that the Fund invests in unrated securities, the Fund's success in achieving its investment objective may depend more heavily on the portfolio manager's creditworthiness analysis than if the Fund invested exclusively in rated securities. In determining whether a security is of comparable quality, the Adviser will consider, for example, whether the issuer of the security has issued other rated securities; whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any); whether and (if applicable) how the security is collateralized; other forms of credit enhancement (if any); the security's maturity date; liquidity features (if any); relevant cash flow(s); valuation features; other structural analysis; macroeconomic analysis; and sector or industry analysis.

[25] Forwards are contracts to purchase or sell securities for a fixed price at a future date beyond normal settlement time (forward commitments).

[26] The Exchange represents that in the future, in the event that there are exchange-traded options on swaps, the Fund may invest in these instruments.

[27] According to the Exchange, the Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. PIMCO's Counterparty Risk Committee evaluates the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, PIMCO credit analysts evaluate each approved counterparty using various methods of analysis, including company visits, earnings updates, the broker-dealer's reputation, PIMCO's past experience with the broker-dealer, market levels for the counterparty's debt and equity, the counterparty's liquidity, and its share of market participation.

[28] To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

[29] The Exchange represents that the Fund will limit its investments in currencies to those currencies with a minimum average daily foreign exchange turnover of USD $1 billion as determined by the Bank for International Settlements (''BIS'') Triennial Central Bank Survey. As of the most recent BIS Triennial Central Bank Survey, at least 52 separate currencies had minimum average daily foreign exchange turnover of USD $1 billion. For a list of eligible currencies, *see www.bis.org.*

[30] According to the Exchange, PIMCO will generally consider an instrument to be economically tied to an emerging market country if the security's ''country of exposure'' is an emerging market country, as determined by the criteria set forth in the Registration Statement. Alternatively, such as when a ''country of exposure'' is not available or when PIMCO believes the following tests more accurately reflect which country the security is economically tied to, PIMCO may consider an instrument to be economically tied to an emerging market country if the issuer or guarantor is a government of an emerging market

The Exchange represents that the Fund's investments, including investments in derivative instruments, will be subject to all of the restrictions under the 1940 Act, including restrictions with respect to illiquid assets. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance.[31] The Exchange represents that the Fund will monitor its respective portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Exchange represents that the Fund will be diversified within the meaning of the 1940 Act. In addition, the Fund intends to qualify annually and elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code. The Fund will not concentrate its investments in a particular industry, as that term is used in the 1940 Act, and as interpreted, modified, or otherwise permitted by a regulatory authority having jurisdiction from time to time.

The Exchange further represents that the Fund's investments, including derivatives, will be consistent with the Fund's investment objective and the Fund's use of derivatives may be used to enhance leverage. However, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's broad-based securities market index (as defined in Form N–1A).

## III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[32] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[33] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[34] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value of the Fund, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[35] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on the Trust's Web site the Disclosed Portfolio (as defined in NYSE Arca Equities Rule 8.600(c)(2)) that will form the basis for the Fund's calculation of NAV at the end of the business day.[36] In addition, a basket composition file, which includes the security names and share quantities (as applicable) required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the National Securities Clearing Corporation. The NAV of the Fund's Shares will normally be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m. Eastern time) on each business day.[37] Information regarding market

country (or any political subdivision, agency, authority or instrumentality of such government), if the issuer or guarantor is organized under the laws of an emerging market country, or if the currency of settlement of the security is a currency of an emerging market country. With respect to derivative instruments, PIMCO will generally consider such instruments to be economically tied to emerging market countries if the underlying assets are currencies of emerging market countries (or baskets or indices of such currencies), or instruments or securities that are issued or guaranteed by governments of emerging market countries or by entities organized under the laws of emerging market countries. While emerging markets corporate debt securities (excluding commercial paper) generally must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for the Fund, at least 80% of issues of such securities held by the Fund must have $200 million or more par amount outstanding at the time of investment.

[31] According to the Exchange, in reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers *willing* to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[32] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[35] The Exchange states that several major market data vendors display or make widely available Portfolio Indicative Values taken from the CTA or other data feeds.

[36] On a daily basis, the Fund will disclose the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

[37] The NAV per Share of the Fund will be determined by dividing the total value of the Fund's portfolio investments and other assets, less any liabilities, by the total number of Shares outstanding. According to the Exchange, portfolio securities and other assets for which market quotes are readily available will be valued at market value. Market value will generally be determined on the basis of last reported sales prices, or if no sales are reported, based on quotes obtained from a quotation reporting system, established market makers, or pricing services. Fixed Income Instruments, including those to be purchased under firm commitment agreements/delayed delivery basis, will generally be valued on the basis of quotes obtained from brokers and dealers or independent pricing services. Domestic and foreign fixed income securities will generally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those assets. Short-term debt instruments having a remaining maturity of 60 days or less will generally be valued at amortized cost. Derivatives will generally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those assets. Local closing prices will be used for all instrument valuation purposes. Foreign currency-denominated derivatives will generally be valued as of the respective local region's market close. With respect to specific derivatives: Currency spot and forward rates from major market data vendors will generally be determined as of the NYSE Close; exchange-traded futures will generally be valued at the settlement price of the relevant exchange; a total return swap on an index will be valued at the publicly available index price; equity total return swaps will generally be valued using the actual underlying equity at local market closing, while

Continued

price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Intra-day and closing price information regarding exchange-traded equity securities, including common stocks, preferred stocks, securities convertible into stocks, closed-end funds, exchange-traded funds, exchange-traded structured products (including ETNs), exchange-traded REITs, and other equity-related securities, will be available from the exchange on which such securities are traded. Intra-day and closing price information regarding exchange-traded options (including options on futures) and futures will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding Fixed Income Instruments and other forms of debt securities also will be available from major market data vendors. Pricing information relating to forwards, spot currency, OTC options and swaps will be available from major market data vendors. Pricing information regarding money market instruments, OTC REITs, private activity bonds, trade claims, privately placed and unregistered securities, OTC real estate-linked derivatives, OTC structured products, credit-linked securities, commodity-linked notes, Brady Bonds, variable and floating rate securities that are not corporate Fixed Income Instruments and floaters and inverse floaters that are not corporate Fixed Income Instruments will be available from major market data vendors. Pricing information regarding other investment company securities will be available from on-line information services and from the Web site for the applicable investment company security. Exchange-traded options quotation and last-sale information for options cleared via the Options Clearing Corporation is available via the Options Price Reporting Authority. Pricing information relating to equity securities traded OTC will be available from major market data vendors. The Trust's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. In addition, trading in the Shares of the Fund may be halted because of other market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[38] Trading in the Shares also will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which trading in Shares of the Fund may be halted.

The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Fund's ''Reporting Authority'' must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Fund's portfolio. The Exchange represents that the Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer, and will implement a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition or changes to the Fund's portfolio.[39] Prior to the commencement of trading, the Exchange states that it will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. The Exchange further represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[40]

The Exchange represents that it deems the Shares to be equity securities, thus rendering the trading of the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

bank loan total return swaps will generally be valued using the evaluated underlying bank loan price minus the strike price of the loan; exchange-traded non-equity options, index options, and options on futures will generally be valued at the official settlement price determined by the relevant exchange, if available; OTC and exchange-traded equity options will generally be valued on a basis of quotes obtained from a quotation reporting system, established market makers, or pricing services or at the settlement price of the applicable exchange; OTC FX options will generally be valued by pricing vendors; all other swaps such as interest rate swaps, inflation swaps, swaptions, credit default swaps, and CDX/CDS will generally be valued by pricing services. Investment company securities that are not exchange-traded will be valued at NAV. Equity securities traded OTC will be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service. Money market instruments, trade claims, OTC REITs, privately placed and unregistered securities, OTC structured products, OTC real-estate linked derivatives, credit-linked securities, commodity-linked notes, Brady Bonds, variable and floating rate securities that are not corporate Fixed Income Instruments; floaters and inverse floaters that are not corporate Fixed Income Instruments and other types of debt securities will generally be valued on the basis of independent pricing services or quotes obtained from brokers and dealers. Securities and other assets for which market quotes are not readily available will be valued at fair value as determined in good faith by the Board or persons acting at their direction. The Board has adopted methods for valuing securities and other assets in circumstances where market quotes are not readily available, and has delegated to PIMCO the responsibility for applying the valuation methods.

[38] These reasons may include: (1) The extent to which trading is not occurring in the securities and financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.

[39] *See supra* note 5. The Exchange states that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients, as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[40] The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

(4) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the exchange-traded options, exchange-traded equities (including common stocks, exchange-traded investment companies, exchange-traded convertibles and preferred securities, exchange-traded REITs, and exchange-traded structured products, including ETNs), futures, and options on futures with other markets or other entities that are members of the ISG, and FINRA may obtain trading information regarding trading in the Shares, exchange-traded options, exchange-traded equities, futures, and options on futures from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-traded options, exchange-traded equities, futures, and options on futures from markets or other entities that are members of ISG or with which the Exchange has in place a CSSA.[41] The Exchange states that FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund that is reported to FINRA's Trade Reporting and Compliance Engine, and that FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[42] as provided by NYSE Arca Equities Rule 5.3.

(7) The Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's broad-based securities market index (as defined in Form N–1A).

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A Securities deemed illiquid by the Advisor or Sub-Advisor, in accordance with Commission guidance.

(9) The Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced. PIMCO's Counterparty Risk Committee evaluates the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, PIMCO credit analysts evaluate each approved counterparty using various methods of analysis, including company visits, earnings updates, the broker-dealer's reputation, PIMCO's past experience with the broker-dealer, market levels for the counterparty's debt and equity, the counterparty's liquidity, and its share of market participation.

(10) The Fund may invest only up to 10% of its total assets in preferred stocks, convertible securities, common stocks, and other equity-related securities; such limit will not include real-estate related investments, such as REITs or investments in common, preferred, or convertible securities of issuers in real estate-related industries.

(11) Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities, including stocks into which a convertible security is converted, whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA.

(12) Not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a CSSA.

(13) The Fund shall invest at least 80% of its assets in corporate debt securities of U.S. and non-U.S. issuers (which may be represented by certain derivatives), including convertible securities and corporate commercial paper; inflation-indexed bonds; bank capital securities; trust preferred securities; and loan participations and assignments.

(14) The Fund may invest up to 20% of its total assets in mortgage-related and other asset backed securities (not including securities issued or guaranteed by Federal agencies and U.S. government sponsored instrumentalities).

(15) The Fund may invest up to 20% of its total assets in structured notes, including hybrid or ''indexed'' securities and event-linked bonds.

(16) The Fund may invest up to 15% of its total assets in high yield securities rated below BBB− (with a minimum level of B− at purchase) by S&P, or equivalently rated by Moody's or Fitch, or, if unrated, determined by PIMCO to be of comparable quality (except that within such limitation, the Fund may invest in mortgage-related securities rated below B−).

(17) The Fund may invest up to 20% of its total assets in securities and instruments of issuers economically tied to emerging market countries.

(18) While non-emerging markets corporate debt securities (excluding commercial paper) generally must have $100 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for the Fund, at least 80% of issues of such securities held by the Fund must have $100 million or more par amount outstanding at the time of investment. In addition, while emerging markets corporate debt securities (excluding commercial paper) generally must have $200 million or more par amount outstanding and significant par value traded to be considered as an

[41] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

[42] 17 CFR 240.10A–3.

eligible investment for the Fund, at least 80% of issues of such securities held by the Fund must have $200 million or more par amount outstanding at the time of investment.

(19) To mitigate leveraging risk as result of certain transactions of the Fund, including transactions in derivative instruments, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

(20) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [43] and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Exchange Act,[44] that the proposed rule change (SR–NYSEArca–2014–85) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2014–30444 Filed 12–29–14; 8:45 am]

**BILLING CODE 8011–01–P**

[43] 15 U.S.C. 78f(b)(5).

[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73912; File No. SR–NASDAQ–2014–102]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Require That a Company Publicly Disclose the Denial of a Listing Application

December 22, 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 December 11, 2014, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to require that companies publicly disclose the denial of a listing application.

The text of the proposed rule change is below; proposed new language is in italics. There are no proposed deletions.

* * * * *

**5205. The Applications and Qualifications Process**

(a)—(h) No change.

*(i) (1) A Company may withdraw its application for initial listing at any time.*

*(2) A Company that receives a written determination denying its application for listing must, within four business days, make a public announcement in a press release or other Regulation FD compliant manner about the receipt of the determination and the Rule(s) upon which the determination is based, describing each specific basis and concern identified by Nasdaq in reaching its determination. If the public announcement is not made by the Company within the time allotted or does not include all of the required information, Nasdaq will make a public announcement with the required information and, if the Company appeals the determination as set forth in Rule 5815, the Hearings Panel will consider the Company's failure to make the public announcement in considering whether to list the Company.*

* * * * *

### 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 processes between 200 and 300 applications each year from companies seeking to list securities on Nasdaq. While most applicants meet the listing requirements, or are prepared to take action to meet those requirements before listing, in some cases a company does not meet the requirements and is not willing, or able, to comply. In other, rare instances, Nasdaq may determine to deny an application based on public interest concerns even though the company meets all initial listing requirements.[3] In either of these cases, the company is informed of the outcome and can withdraw its application before the application is formally denied.[4] If the company does not withdraw the application, the Nasdaq Listing Qualifications Department will issue a written denial, which the company can appeal to a Listing Qualifications Hearings Panel.[5]

The procedures for such an appeal are similar to an appeal from a delisting determination. However, while the rules provide transparency to a delisting event by requiring the company to disclose a delisting determination, there is no comparable requirement for disclosure of an initial listing denial.

Just as a delisting determination may be considered a material event to the investing public, Nasdaq believes that a denial of initial listing is equally so, particularly in the context of a company that previously publicly announced its intention to seek a listing, which is often the case. Investors view such an announcement to list as a positive development and such announcements often attract investor interest. Nasdaq believes that the public is therefore equally interested in the outcome of such an application and proposes to adopt a rule that would require a listing applicant that has been denied listing to publicly disclose the receipt of the determination and the circumstances on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Listing Rule 5101 and IM–5101–1.

[4] While Nasdaq has always allowed a company to withdraw its application at any time, the proposed rule change will add this to the rules.

[5] Listing Rule 5815(a)(1). A Company that has appealed a written denial may also withdraw its application (and appeal) while the appeal is pending.

which the decision was based.[6] Just as is the case with a delisting determination, the proposed rule would require that the disclosure be made within four business days of receipt of Nasdaq's determination. In cases where the company fails to make the required disclosure, Nasdaq would make the disclosure and a Listing Qualifications Hearings Panel would consider the company's failure to make the required disclosure when it considers any subsequent appeal of the denial.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed rule change will impose a disclosure requirement on companies that are denied initial listing on Nasdaq, which will help protect investors and the public interest by providing transparency to investors about the status of a company's application. The proposed rule change will not affect a company's ability to withdraw its listing application at any time and will add a statement about that ability to Nasdaq's rules, which will promote just and equitable principles of trade by enhancing transparency and allowing companies to maintain control over the consideration of their applications.

*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 proposed rule change will impose an additional disclosure requirement on a small universe of companies and is not expected to affect the number of companies applying to list on Nasdaq or any other exchange, or any company's ability to list.

*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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2014–102 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–NASDAQ–2014–102. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–102 and should be submitted on or before January 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Brent J. Fields,**

*Secretary.*

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BILLING CODE 8011–01–P

[6] The rule would not require disclosure if a company withdraws its listing application before receiving a written determination from Nasdaq. Companies withdraw listing applications for many reasons, including instances where the company is acquired, determines not to list on an exchange, or lists on another venue. In addition, Nasdaq does not believe it can enforce a disclosure requirement after a company has withdrawn from its process. Nonetheless, Nasdaq believes that such disclosure may be appropriate and encourages companies to make such disclosure.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73906; File No. SR–CHX–2014–20]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Trading Permit Application Fee

December 22, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on December 15, 2014, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

CHX proposes to amend the Trading Permit application fee. The text of this proposed rule change is available on the Exchange's Web site at *(www.chx.com)* and in the Commission's Public Reference Room.

[1] 15 U.S. C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes 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 CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Section A of the Fee Schedule to increase the Trading Permit application fee from $200 to $2,000 per application.[3] The Trading Permit application fee is essentially a new Participant application fee, as every active Participant must hold a Trading Permit and no Participant may hold more than one Trading Permit.[4] The Exchange submits that the current fee is no longer commensurate with the actual cost associated with the Exchange's comprehensive review of Trading Permit applications. Thus, the Exchange believes it is appropriate to increase the Trading Permit application fee to be identical to similar fees of other national securities exchanges, like NASDAQ and NASDAQ BX.[5]

The Exchange also proposes to replace the term ''Trading Permit'' after ''$2000/'' with the more accurate term ''application,'' as the fee is currently assessed per application. For example, a separate Trading Permit application fee is, and will continue to be, assessed for each Trading Permit application submitted after (1) a withdrawal of an application by a prospective Participant or (2) rejection of an application by the Exchange. The Exchange believes that this amendment will clarify that if a prospective Participant submits more than one Trading Permit application, regardless of the reason, the prospective Participant will be assessed the proposed Trading Permit application fee for each application. Incidentally, the Exchange also proposes to adopt language indicating that the fee is non-refundable.

The Exchange also proposes to eliminate the new Participant Firm registration fee of $200 under Section C. In light of the proposed increase to the Trading Permit application fee, the Exchange believes that the new Participant Firm registration fee is unnecessary.

Aside from increasing the Trading Permit application fee to $2,000 per application and the elimination of the new Participant Firm registration fee of $200, the Exchange does not propose to substantively modify any other fees, assessments, credits or rebates.

Operative Date

The Exchange proposes to make this proposed rule change operative January 2, 2015.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Sections 6(b)(4) of the Act[7] in particular, as the proposed rule provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. The Exchange believes that the proposed increase of the Trading Permit application fee from $200 to $2,000 per application equitably allocates fees among prospective Participants in a non-discriminatory manner as it will be assessed to all prospective Participants. Similarly, the proposed elimination of the new Participant Firm registration fee equitably allocates fees among prospective Participants in a non-discriminatory manner as it will no longer be assessed to any prospective Participants. Moreover, the proposed Trading Permit application fee is reasonable in light of the fact that it is identical to similar fees of other national securities exchanges, like NASDAQ and NASDAQ BX.[8]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed Trading Permit application fee will enhance competition as it would be identical to similar fees of other national securities exchanges, such as NASDAQ and NASDAQ BX.[9]

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph(f)(2) of Rule 19b–4 thereunder[11] because it establishes or changes a due, fee or other charge imposed by the Exchange.

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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CHX–2014–20 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File No. SR–CHX–2014–20. This file number should be included on the subject line if email is used. To help the

[3] CHX Article 1, Rule 1(aa) defines ''Trading Permit'' as ''a permit issued by the Exchange, granting the holder a revocable license to execute approved securities transactions through the Exchange's Trading Facilities, or to have those transactions executed on its behalf.''

[4] CHX Article 3, Rule 2(e) provides that ''all Trading Permits must be held by active Participant Firms'' and ''no Participant Firm shall hold more than one Trading Permit.''

[5] *See* NASDAQ and NASDAQ BX fee schedules, both of which assess a $2,000 fee per new member application.

[6] 15 U.S. C. 78f.

[7] 15 U.S. C. 78f(b)(4).

[8] *See supra* note 5.

[9] *Id.*

[10] 15 U.S. C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

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 changes 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 CHX. 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–CHX–2014–20 and should be submitted on or before January 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2014–30442 Filed 12–29–14; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73907; File No. SR–OCC–2014–24]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Extended and Overnight Trading Sessions

December 22, 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 December 12, 2014, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change is filed by OCC in connection with a proposed change to its operations concerning the clearance of confirmed trades executes in extended and overnight trading sessions (hereinafter, ''overnight trading sessions'') offered by exchanges for which OCC provides clearance and settlement services.

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

This proposed rule change is being filed in connection with a proposed change to OCC's operations concerning the clearance of confirmed trades executed in overnight trading sessions offered by exchanges for which OCC provides clearance and settlement services. OCC currently clears overnight trading activity for CBOE Futures Exchange, LLC (''CFE'').[3] The total number of trades submitted to OCC from overnight trading sessions is nominal, typically less than 3,000 contracts per session. However, OCC has recently observed an industry trend whereby exchanges are offering overnight trading sessions beyond traditional hours. Exchanges offering overnight trading sessions have indicated that such sessions benefit market participants by providing additional price transparency and hedging opportunities for products traded in such sessions, which, in turn, promotes market stability.[4] In light of this trend, OCC proposes to implement a framework for clearing trades executed in such sessions that includes: (1) Qualification criteria used to approve clearing members for overnight trading sessions, (2) systemic controls to identify trades executed during overnight trading sessions by clearing members not approved for such sessions, (3) enhancements to OCC's overnight monitoring of trades submitted by exchanges during overnight trading sessions, (4) enhancements to OCC's credit controls with respect to monitoring clearing members' credit risk during overnight trading sessions, including procedures for contacting an exchange offering overnight trading sessions in order to invoke use of the exchange's kill switch, and (5) taking appropriate disciplinary action against clearing members who attempt to clear during overnight trading session without first obtaining requisite approvals. These changes (described in greater detail below) are designed to reduce and mitigate the risks associated with clearing trades executed in overnight trading sessions. In addition, the only products that will be eligible for overnight trading sessions are index options and index futures products.

OCC's standards for determining whether to provide clearing services for overnight trading sessions offered by an exchange and the implementation of a framework are designed to work in conjunction with the risk controls of the exchanges that offer overnight trading sessions. OCC would confirm an exchange's risk controls as well as its staffing levels as they relate to overnight trading sessions to determine if OCC may reasonably rely on such risk controls to reduce risk presented to OCC by the exchange's overnight trading sessions. Such exchange risk controls will consist of: (1) Price reasonability checks, (2) controls to prevent orders from being executed beyond a certain percentage (determined by the exchange) from the initial execution price, (3) activity based protections which focus on risk beyond price, such as a high number of trades occurring in a set period of time, and (4) kill switch capabilities, which may be initiated by the exchange and can cancel all open quotes or all orders of a particular participant. OCC believes that confirming the existence of applicable pre-trade risk controls as well as overnight staffing at the relevant exchanges is essential to mitigating risks

[3] ELX Futures LP (''ELX'') previously submitted overnight trading activity to OCC, but currently does not submit trades from overnight trading sessions to OCC. OCC will re-evaluate ELX's risk controls in the event ELX re-institutes its overnight trading sessions.

[4] *See* CFE–2014–010 at *http://cfe.cboe.com/publish/CFErulefilings/SR-CFE-2014-010.pdf.*

presented to OCC from overnight trading sessions.[5] Providing clearing services to exchanges offering such sessions is consistent with OCC's mission to provide market participants with clearing and risk management solutions that respond to changes in the marketplace and may result in increased cleared contract volume.

Qualification Criteria

In order to mitigate risks associated with clearing for overnight trading sessions, clearing members that participate in such trading sessions would be required to provide contact information to OCC for operational and risk personnel available to be contacted by OCC during such sessions. In addition, OCC would require that clearing members participating in an overnight trading session to post additional margin in a designated account in order to mitigate against the risk that OCC cannot draft a clearing member's bank account during an overnight trading session.[6] OCC would also adopt a procedure whereby, on a quarterly basis, it confirms its record of clearing members eligible for overnight trading sessions with a similar record maintained by exchanges offering such overnight trading sessions.

With respect to providing operational and risk contacts, under OCC Rule 201, each clearing member is required to maintain facilities for conducting business with OCC, and a representative of the clearing member authorized in the name of the clearing member to take all action necessary for conducting business with OCC is required to be available at the facility during such hours as may be specified from time-to-time by OCC. Similarly, OCC Rules 214(c) and (d) require clearing members to ensure that they have the appropriate number of qualified personnel and to maintain the ability to process anticipated volumes and values of transactions. OCC would use this existing authority to require clearing members trading during overnight trading sessions to maintain operational and risk staff that may be contacted by OCC during such sessions.

OCC would impose upon clearing members qualified to participate in overnight trading sessions additional margin requirement in an amount of the lesser of $10 million or 10% of the clearing member's net capital (''Additional Margin''), which would be equal to the first monitoring risk threshold (described below) and which would be collected the morning before each overnight trading sessions.[7] Clearing members must identify the proprietary account that would be charged the Additional Margin amount. The Additional Margin requirement is intended to provide OCC with additional margin assets should a clearing member's credit risk increase during overnight trading sessions. OCC proposes to adopt a process whereby each morning OCC Financial Risk Management staff would assess the Additional Margin requirement against clearing members eligible to participate in overnight trading sessions. Clearing members that do not have sufficient excess margin on deposit with OCC to meet the Additional Margin amount would be required to deposit additional funds with OCC to satisfy the Additional Margin requirement.[8] This process would be adopted under existing rule authority.

Moreover, OCC also would confirm that an exchange offering overnight trading sessions has adopted a procedure whereby such exchange would contact OCC when a trader requests trading privileges during overnight trading sessions. The purpose of this contact is to verify that the trader's clearing firm (*i.e.,* the OCC clearing member) is approved for overnight trading sessions. If the applicable OCC clearing member is not approved for overnight trading sessions, then the clearing member must receive OCC's approval for overnight trading sessions, or the exchange would not provide the trader trading privileges during overnight trading sessions. Moreover, OCC would confirm that an exchange offering overnight trading sessions has implemented a procedure to periodically (*i.e.,* quarterly) validate its record of approved clearing firms against OCC's record of clearing members approved for overnight trading sessions. Any discrepancies between the two records would be promptly resolved by either the clearing member obtaining approval at OCC for overnight trading sessions, or by the exchange revoking the clearing firm's trading privileges for overnight trading sessions.

Systemic Controls

OCC plans to implement system changes so that trades submitted to OCC during overnight trading sessions that have been executed by clearing members not approved for such trading sessions would be reviewed by OCC staff after acceptance but before being processed (each such trade a being a ''Reviewed Trade''). OCC would contact the submitting exchange regarding each Reviewed Trade in order to determine if the trade is a valid trade. If the exchange determines that the Reviewed Trade was in error such that, as provided in Article VI, Section 7(c), new or revised trade information is required to properly clear the transaction, OCC expects the exchange would instruct OCC to disregard or ''bust'' the trade. If the exchange determines that the Reviewed Trade was not in error, then OCC would clear the Reviewed Trade and take appropriate disciplinary action against the non-approved clearing member, as described below. OCC believes that clearing the Reviewed Trade is appropriate in order to avoid potentially harming the clearing member approved for overnight trading sessions that is on the opposite side of the transaction.

Overnight Monitoring

OCC plans to implement additional overnight monitoring in order to better monitor clearing members' credit risk during overnight trading sessions. Such monitoring of credit risk is similar to existing OCC practices concerning futures cleared during overnight trading hours and includes automated processes within ENCORE to measure, by clearing member: (i) The aggregate mark-to-market amounts of a clearing member's positions, including positions created during overnight trading, based on current prices using OCC's Portfolio Revaluation system, (ii) the aggregate incremental margin produced by all positions resulting from transactions executed during overnight trading, and (iii) with respect to options cleared during overnight trading hours, the aggregate net trade premium positions resulting from trades executed during overnight trading (each of these measures being a ''Credit Risk Number''). Hourly credit reports would

[5] Comparable controls are applied to futures and future option trades executed in overnight trading sessions currently cleared by OCC, although such controls have been implemented by clearing futures commission merchants (''clearing FCMs'') pursuant to Commodity Futures Trading Commission (''CFTC'') Regulation 1.73, which also requires such clearing FCMs to monitor for adherence to such controls during regular and overnight trading sessions. OCC believes that it may reasonably rely on such regulation to reduce risk presented to OCC during futures markets overnight trading sessions. See 17 CFR 1.73. OCC also confirmed CFE maintains kill switch capabilities.

[6] Clearing members will be required to designate a proprietary bank account to ensure that OCC has a general lien on the assets in the account and can use them to satisfy any obligation of the clearing member to OCC.

[7] Clearing members approved for overnight trading sessions who do not meet the Additional Margin requirement for a given overnight trading session will be treated like a clearing member not approved overnight trading sessions, as described below.

[8] Under OCC Rule 601, OCC has the discretion to fix the margin requirement for any account at an amount that it deems necessary or appropriate under the circumstances to protect the interests of clearing members, OCC and the public.

be generated by ENCORE containing the Credit Risk Numbers expressed in terms of both dollars and, except for the mark-to-market position values, as a percentage of net capital for each clearing member trading during overnight trading sessions. The Credit Risk Numbers are the same information used by OCC staff to evaluate clearing member exposure during regular trading hours and, in addition to OCC's knowledge of its clearing members' businesses, are effective measures of the risk presented to OCC by each clearing member. OCC's Operations staff would review such reports as they are generated and, in the event that any of the Credit Risk Numbers for positions established by a clearing member during an overnight trading session exceeds established thresholds, staff would alert OCC's Market Risk staff [9] of the exceedance in accordance with established procedures, as described below. Market Risk staff would follow a standardized process concerning such exceedances, including escalation to OCC's management, if required by such process. Given the nominal volume of trades executed in overnight trading sessions that are presently submitted for clearance, no changes in current staffing levels that support overnight clearing activities is contemplated at this time, however, such staffing levels will be periodically assessed and adjusted, as appropriate. As part of the overnight clearing activities, OCC has, however, designated an on-call Market Risk duty officer who would be responsible for reviewing issues that arise when clearing for overnight trading session and determining what measures to be taken as well as additional escalation, if necessary.

With respect to OCC's escalation thresholds, if any Credit Risk Number of a clearing member approved for overnight trading sessions is $10 million or more, or any Credit Risk Number equals 10% or more of the clearing member's net capital, OCC's Operations staff would be required to provide email notification to Market Risk and Member Services staff. If any Credit Risk Number of a clearing member not approved for overnight trading sessions is $10 million or more, or any Credit Risk Number equals 10% or more of the clearing member's net capital, OCC's Operations would also notify Market Risk and Member Services staff as well as its senior management. Such departments would take action to prevent additional trading by the non-approved clearing member, including contacting the exchange to invoke use of the exchange's kill switch.

If any Credit Risk Number of a clearing member approved for overnight trading sessions is $50 million or more, or equals 25% or more of the clearing member's net capital, Operations staff would be required to contact, by telephone: (i) Market Risk and Member Services, (ii) the applicable exchange for secondary review, and (iii) the clearing member's designated contacts. The on-call Market Risk duty officer would also consider if additional action is necessary, which may include contacting a designated executive officer in order to issue an intra-day margin call, increase the clearing member's margin requirement in order to prevent the withdrawal of a specified amount of excess margin collateral, if any, the clearing member has on deposit with OCC or contacting the exchange in order to invoke use of its kill switch. If any Credit Risk Number is $75 million or more, or equals 50% or more of the clearing member's net capital, Operations staff would be required to contact, by telephone, Market Risk staff, the on-call Market Risk duty officer and a designated executive officer. Such officer would be responsible for reviewing the situation and determining whether to implement credit controls, which are described in greater detail below and include: Issuing an intra-day margin call, increasing a clearing member's margin requirement in order to prevent the withdrawal of a specified amount of excess margin collateral, if any, the clearing member has on deposit with OCC, whether further escalation is warranted in order for OCC to take protective measures pursuant to OCC Rule 305, or contact the exchange in order to invoke use of its kill switch. OCC chose the above described escalation thresholds based on its analysis of historical overnight trading activity across the futures industry. OCC believes that these thresholds strike an appropriate balance between effective risk monitoring and operational efficiency.

Credit Controls

In order to address credit risk associated with trading during overnight trading sessions, and as described above, OCC would collect Additional Margin from clearing members as well as monitor and analyze the impact that positions established during such sessions have on a clearing member's overall exposure. Should the need arise based on threshold breaches described above, and pursuant to OCC Rule 609, OCC may require the deposit of additional margin (''intra-day margin'') by any clearing member that increases its incremental risk as a result of trading activity during overnight trading sessions. Accordingly, a clearing member's positions established during such sessions will be incorporated into OCC's intra-day margin process. Should a clearing member's exposure significantly increase while settlement banks are not open to process an intra-day margin call, OCC has the authority under OCC Rule 601 to increase a clearing member's margin requirement which would restrict its ability to withdraw excess margin collateral. The implementation of these measures is discussed more fully below.

In the event that a clearing member's exposure during overnight trading sessions causes a clearing member to exceed OCC's intra-day margin call threshold for overnight night trading sessions, OCC would require the clearing member to deposit intra-day margin equal to the increased incremental risk presented by the clearing member. Specifically, if a clearing member has a total risk charge [10] exceeding 25% (a reduction of the usual figure of 50%), as computed overnight by OCC's STANS system, and a loss of greater than $50,000 from an overnight trading session(s), as computed by Portfolio Revaluation, OCC would initiate an intra-day margin call. OCC would know at approximately 8:30 a.m. (Central Time) if an intra-day margin call on a clearing member would be initiated based on breaches of these thresholds. This ''start of business'' margin call is in addition to daily margin OCC collects from clearing members pursuant to OCC Rule 605, any intra-day margin call that OCC may initiate as a result of regular trading sessions or special margin call that OCC may initiate.

In addition to, or instead of, requiring additional intra-day margin, OCC Rule 601 [11] and OCC's Clearing Member Margin Call Policy work together to authorize Market Risk staff to increase a clearing member's margin requirement which may be in an amount equal to an intra-day margin call.[12] (Any increased

[9] OCC's Member Services staff will also receive alerts in order to contact clearing members as may be necessary.

[10] Total risk charge is a number derived from STANS outputs and is the sum of expected shortfall, stress test charges and any add-on charges computed by STANS. STANS is OCC's proprietary margin methodology.

[11] In addition, OCC Rule 601 provides OCC with the authority to fix the margin requirement for any account or any class of cleared contracts at such amount as it deems necessary or appropriate under the circumstances to protect the respective interests of clearing members, OCC and the public.

[12] Clearing members frequently deposit margin at OCC in excess of requirements.

margin requirement will remain in effect until the next business day.) This action would immediately prevent clearing members from withdrawing any excess margin collateral (in the amount of the increased margin requirement) the clearing member has deposited with OCC. With respect to clearing trades executed in overnight trading sessions, and in the event OCC requires additional margin from a clearing member, Market Risk staff may use increased margin requirements as a means of collateralizing the increase in incremental risk a clearing member incurred during such sessions without having to wait for banks to open to process an intra-day margin call.[13] Such action may be taken by OCC instead of or in addition to issuing an intra-day margin call depending on the amount of excess margin a clearing member has on deposit with OCC and the amount of the incremental risk presented by such clearing member. The expansion of OCC's intra-day margin call process as described in the preceding paragraph, including OCC's ability to manually increase clearing members' margin requirements, would mitigate the risk that OCC is under-collateralized as a result of overnight trading hours.

Moreover, a designated executive officer may call an exchange offering overnight trading sessions to invoke use of its kill switch. The kill switch would prevent a clearing member (or the market participant clearing through a clearing member) from executing trades on the exchange during a given overnight trading session or, if needed, stop all trading during a given overnight trading session. Finally, pursuant to OCC Rule 305, the Executive Chairman or the President of OCC, in certain situations, has the authority to impose limitations and restrictions on the transactions, positions and activities of a clearing member. This authority would be used, as needed, in the event a clearing member accumulates significant credit risk during overnight trading sessions, or a clearing member's activities during such trading sessions otherwise warrant OCC taking protective action.

Rule Enforcement Actions

In order to deter clearing members from attempting to participate in overnight trading sessions without authorization as well as appropriately enforce the above described processes, OCC would ensure that any attempt by a clearing member to participate in overnight trading sessions without first obtaining the necessary approval would result in the initiation of a rule enforcement action against such clearing member. As described above, clearing members not approved for overnight trading sessions who trade during such overnight sessions would have their trades reviewed by OCC staff. Clearing members who attempted to participate in overnight trading sessions that did not obtain the necessary approval to do so would be subject to a minor rule violation fine.[14] In addition, if a clearing member's operational or risk contacts for overnight trading sessions were unavailable had OCC attempted to contact such individuals, the clearing member would be subject to a minor rule violation fine. OCC has existing processes in place to monitor for clearing member violations of OCC's rules and such processes would also apply to clearing member activity during overnight trading sessions.

2. Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[15] because it provides for the safeguarding of securities and funds in the custody and control of OCC. OCC believes that the proposed changes described above will provide OCC with the tools necessary to mitigate risks that may occur as a result of overnight trading sessions thereby providing for the safeguarding of securities and funds in the custody and control of OCC. As described above, OCC will implement a risk monitoring processes designed to identify increases in credit risk presented to OCC as a result of overnight trading sessions as well as implement additional safeguards designed to mitigate operational risk associated with overnight trading sessions. These practices are designed to identify and mitigate risks that may be presented to OCC as a result of overnight trading sessions, and provide for the safeguarding of securities and funds in the custody and control of OCC. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

*(B) Clearing Agency's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose a burden on competition.[16] The proposed rule change concerns operational changes that are designed to reduce OCC's exposure to risk as a result of clearing member activities during overnight trading sessions and are protective in nature. These changes will be applied uniformly across all clearing members and all exchanges participating in overnight trading sessions. Accordingly, OCC does not believe that the proposed rule change would impose a burden on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2014–24 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2014–24. 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

[13] Clearing members would be able to substitute the locked-up collateral during normal time frames (*i.e.,* 6:00 a.m. to 5:00 p.m. (Central Time) for equity securities).

[14] *See* OCC Rule 1201(b).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 15 U.S.C. 78q–1(b)(3)(I).

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 OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_24.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2014–24 and should be submitted on or before January 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2014–30443 Filed 12–29–14; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73889; File No. SR–ISEGemini–2014–30]**

## Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

December 19, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 15, 2014, ISE Gemini, LLC (the ''Exchange'' or ''ISE Gemini'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

ISE Gemini is proposing to amend language in the Schedule of Fees related to excluding days from its average daily volume (''ADV'') calculations when the market is not open for the entire trading day. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend language in the Schedule of Fees related to excluding days from its ADV calculations when the market is not open for the entire trading day. The Exchange currently provides tiered fees and rebates to market participants based on members' ADV in a given month. In determining applicable tiers, the Exchange may exclude from its ADV calculation any day that the market is not open for the entire trading day. This allows the Exchange to exclude days, for example, where the Exchange declares a trading halt in all securities, honors a market-wide trading halt declared by another market, or closes early for holiday observance. On November 3, 2013, the Exchange's affiliate, the International Securities Exchange, LLC (''ISE''), amended its Schedule of Fees to permit it to exclude days only for those members that would have a lower ADV with the day included.[3] As noted in the ISE proposed rule filing, some members may be inadvertently disadvantaged when a day is removed from the ADV calculation if the member continues to trade significant volume on that day. In order to prevent this undesirable result, and preserve the Exchange's intent behind adopting volume-based pricing, ISE Gemini proposes to adopt language similar to ISE, allowing the Exchange to exclude days from its ADV calculation only for members that would have a lower ADV with the day included.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and Section 6(b)(4) of the Act,[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that it is reasonable and equitable to only exclude a day from its ADV calculations for members that would otherwise have a lower ADV for the month as this preserves the Exchange's intent behind adopting volume-based pricing, and avoids penalizing members that continue to actively trade during excluded days. Without this change, members that step up and trade significant volume on days where the market is not open for the entire trading day may be negatively impacted, resulting in an effective cost increase for those members. The Exchange further believes that the proposed rule change is not unfairly discriminatory because it applies equally to all members and ADV calculations. As is ISE Gemini's current practice, the Exchange will provide a notice, and post it on the Exchange's Web site, to inform members of any day that is to be excluded from its ADV calculations in connection with this proposed rule change.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[6] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed

[3] *See* Securities Exchange Act Release No. 73601 (November 14, 2014), 79 FR 69170 (November 20, 2014) (SR–ISE–2014–51).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(8).

modifications to its ADV calculation are pro-competitive and will result in lower total costs to end users, a positive outcome of competitive markets. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] because it establishes a due, fee, or other charge imposed by ISE Gemini.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–ISEGemini–2014–30 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISEGemini–2014–30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISEGemini–2014–30, and should be submitted on or before January 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2014–30226 Filed 12–29–14; 8:45 am]

**BILLING CODE 8011–01–P**

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

### Bureau of International Security and Nonproliferation

**[Public Notice 8986]**

### Imposition of Nonproliferation Measures Against Foreign Persons, Including a Ban on U.S. Government Procurement

**AGENCY:** Bureau of International Security and Nonproliferation, Department of State.

**ACTION:** Notice.

**SUMMARY:** A determination has been made that a number of foreign persons have engaged in activities that warrant the imposition of measures pursuant to Section 3 of the Iran, North Korea, and Syria Nonproliferation Act. The Act provides for penalties on entities and individuals for the transfer to or acquisition from Iran since January 1, 1999; the transfer to or acquisition from Syria since January 1, 2005; or the transfer to or acquisition from North Korea since January 1, 2006, of goods, services, or technology controlled under multilateral control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction (WMD) or cruise or ballistic missile systems. The latter category includes (a) items of the same kind as those on multilateral lists but falling below the control list parameters when it is determined that such items have the potential of making a material contribution to WMD or cruise or ballistic missile systems, (b) items on U.S. national control lists for WMD/missile reasons that are not on multilateral lists, and (c) other items with the potential of making such a material contribution when added through case-by-case decisions.

**DATES:** *Effective Date:* December 19, 2014.

**FOR FURTHER INFORMATION CONTACT:** On general issues: Pam Durham, Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation, Department of State, Telephone (202) 647–4930. For U.S. Government procurement ban issues: Eric Moore, Office of the Procurement Executive, Department of State, Telephone: (703) 875–4079.

**SUPPLEMENTARY INFORMATION:** On August 5, 2014 the U.S. Government determined that the measures

authorized in Section 3 of the Iran, North Korea, and Syria Nonproliferation Act (Pub. L. 109–353) shall apply to the following foreign persons identified in the report submitted pursuant to Section 2(a) of the Act:

Belvneshpromservice (BVPT) (Belarus) and any successor, sub-unit, or subsidiary thereof;

Dalian Sunny Industries (China) [also known as: LIMMT] and any successor, sub-unit, or subsidiary thereof;

Karl Lee (China) [also known as: Li Fang Wei];

Wah Cheong Tai Company (China) and any successor, sub-unit, or subsidiary thereof;

Iran Electronics Industries (IEI) (Iran) and any successor, sub-unit, or subsidiary thereof;

Iranian Revolutionary Guard Corps (IRGC) Qods Force (Iran) and any successor, sub-unit, or subsidiary thereof;

Milad Jafari (Iran);

Ryongaksan (North Korea) and any successor, sub-unit, or subsidiary thereof;

Geroi Rossii (Russia) and any successor, sub-unit, or subsidiary thereof;

Instrument Design Bureau (KBP) Tula (Russia) and any successor, sub-unit, or subsidiary thereof;

JSC Mic NPO Mashinostroyenia (NPOM) (Russia) and any successor, sub-unit, or subsidiary thereof;

Russian Aircraft Corporation (RAC) MiG (Russia) and any successor, sub-unit, or subsidiary thereof;

Al-Zargaa Engineering Complex (ZEC) (Sudan) and any successor, sub-unit, or subsidiary thereof;

Giad Heavy Industries Complex (Sudan) and any successor, sub-unit, or subsidiary thereof;

Sudan Master Technologies (SMT) (Sudan) and any successor, sub-unit, or subsidiary thereof;

Military Industrial Corporation (MIC) (Sudan) and any successor, sub-unit, or subsidiary thereof;

Yarmouk Industrial Complex (Sudan) and any successor, sub-unit, or subsidiary thereof;

Army Supply Bureau (ASB) (Syria) and any successor, sub-unit, or subsidiary thereof;

Ministry of Defense (Syria) and any successor, sub-unit, or subsidiary thereof;

Scientific Studies and Research Center (SSRC) (Syria) and any successor, sub-unit, or subsidiary thereof;

Syrian Air Force Intelligence (SAFI) (Syria) and any successor, sub-unit, or subsidiary thereof;

Syrian Electronic Warfare Directorate (Syria) and any successor, sub-unit, or subsidiary thereof; and

Venezuelan Military Industry Company (CAVIM) (Venezuela) and any successor, sub-unit, or subsidiary thereof.

Accordingly, pursuant to Section 3 of the Act, the following measures are imposed on these persons:

1. No department or agency of the United States Government may procure or enter into any contract for the procurement of any goods, technology, or services from these foreign persons, except to the extent that the Secretary of State otherwise may determine;

2. No department or agency of the United States Government may provide any assistance to these foreign persons, and these persons shall not be eligible to participate in any assistance program of the United States Government, except to the extent that the Secretary of State otherwise may determine;

3. No United States Government sales to these foreign persons of any item on the United States Munitions List are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and

4. No new individual licenses shall be granted for the transfer to these foreign persons of items the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for two years from the effective date, except to the extent that the Secretary of State may subsequently determine otherwise.

Dated: December 22, 2014.

**Thomas M. Countryman,**

*Assistant Secretary of State for International Security and Nonproliferation.*

[FR Doc. 2014–30564 Filed 12–29–14; 8:45 am]

BILLING CODE 4710–25–P

## DEPARTMENT OF STATE

**[Public Notice 8987]**

### Request for Nominations of Experts for Consideration as Authors and/or Editors for the Sixth United Nations Environment Programme Global Environment Outlook (GEO–6)

**AGENCY:** Department of State.

**ACTION:** This is an announcement of an opportunity to recommend experts to the U.S. government for nomination as Coordinating Lead Authors, Lead Authors, Contributing Authors, Review Editors, and Communities of Practice Moderators for the Sixth United Nations Environment Programme North American Environmental Outlook and Global Environment Outlook (GEO–6).

**SUMMARY:** Governments, along with other stakeholder groups, have been invited to nominate experts to participate in the GEO–6 assessment. The Department of State is coordinating the recommendation of experts to the United Nations Environment Programme for GEO–6. The purpose of GEO–6 is to provide a comprehensive, integrated, and scientifically credible global environmental assessment to support decision-making processes. Candidates may be nominated directly at *http://hqweb.unep.org/dewa/dewa_mvc_vb/form/Default.aspx?param1=geo6&param2=berlin.* For nominations to be considered within the U.S. government nomination process, they must also be submitted electronically to the United States Department of State, Office of Environmental Quality and Transboundary Issues (*matuszakjm@state.gov* and *lathamme@state.gov*), which is coordinating the U.S. government nomination process.

**DATES:** Nominations should be received no later than January 19, 2015.

**FOR FURTHER INFORMATION CONTACT:** John Matuszak of the Office of Environmental Quality and Transboundary Issues, U.S. Department of State, is serving as the coordinator of this nomination process. Mr. Matuszak can be reached at email *matuszakjm@state.gov, or telephone* 1–202–647–9278. Please copy Michael Latham at email *lathamme@state.gov, or telephone* 1–201–647–1126.

**SUPPLEMENTARY INFORMATION:** The Global Environment Outlook is the primary assessment process used by the United Nations Environment Programme (UNEP) to review the state of the global environment. It is a tool that informs decision-making, focusing on assessment priorities and analyzing policy challenges and opportunities to provide policy response options. It is also a communications tool that brings together diverse stakeholder groups, builds capacity, and aims to raise awareness on the status and trends of the environment. The latest GEO edition, GEO–5, can be found at: *http://www.unep.org/geo/geo5.asp.*

Experts are expected to have a thorough understanding in one or more of the following areas: Environmental science; natural resource measurement and management; environmental and

resource economics; environment and development priorities, challenges, and policy; and environmental management. UNEP will select nominees by matching expertise to specific roles, paying due attention to disciplinary, gender, and geographical balance. Details of the GEO–6 nominating criteria may be found online at: *http://www.unep.org/geo/nomination-criteria.asp.* Key roles and responsibilities, including the specific Terms of Reference (ToR) for the various experts and groups can be found at: *http://www.unep.org/geo/expert-tor.asp.* Nominations may be made at *http://hqweb.unep.org/dewa/dewa_mvc_vb/form/Default.aspx?param1=geo6&param2=berlin.* For nominations to be considered within the U.S. government nomination process, they must also be submitted to the United States Department of State. GEO–6 will review the nominations from all participating governments, individuals and organizations and make final decisions on nominees.

Selection as a U.S. government nominee does not guarantee selection by GEO–6 itself. Participants in the GEO process volunteer their time. Nominated individuals should agree in advance to fulfill the role for which they are nominated, should they be selected to do so by UNEP GEO. Nomination by the U.S. government to GEO–6 does not imply a commitment by the U.S. government to provide financial support for participation.

UNEP may provide travel and subsistence costs for non-Federal participants if requested by the participant, subject to the availability of resources. Additional guidance on compensation of expenses and remuneration of services will be available on the UNEP Web site.

**How To Recommend Experts**

1. Refer to the GEO–6 Web site for detailed background information on the 6th Assessment Report (*http://www.unep.org/geo/nomination-criteria.asp,* and *http://www.unep.org/geo/expert-tor.asp*). The document on GEO–6 nominations identifies the substantive areas covered in the report. It is important to note that the time commitment required to carry out different roles in the GEO–6 process (Coordinating Lead Authors, Lead Authors, Contributing Authors, Review Editors, and Communities of Practice Moderators) varies greatly.

2. Make sure that any of the experts whom you wish to recommend are willing to serve in the role for which they are nominated.

3. Nominations to be considered within the U.S. government nomination process must be submitted to the U.S. Department of State, Office of Environmental Quality and Transboundary Issues no later than January 19, 2015. Provide the required GEO–6 nomination information, one for each nominee, including an up-to-date *curriculum vitae* of no more than three pages and identification of the role for which the individual is being nominated. Send this information by email to *matuszakjm@state.gov* and *lathamme@state.gov.* Please note that partial nomination packages will not be considered.

**What Happens Next?**

In a process coordinated through the U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Environmental Quality and Transboundary Issues, technical experts and managers of relevant science and technology programs within the U.S. government will review recommendations and forward a slate of nominees to GEO–6 on the basis of their qualifications. Submission of a nomination to the State Department does not guarantee that the nomination will be forwarded by the U.S. government to UNEP.

*Disclaimer:* This Public Notice is a request for nominations, and is not a request for applications. No granting or money is directly associated with this request for suggestions for GEO–6. There is no expectation of U.S. Government resources or funding associated with any nominations.

Dated: December 22, 2014.

**John M. Matuszak,**

*Acting Director, Office of Environmental Quality and Transboundary Issues, U.S. Department of State.*

[FR Doc. 2014–30561 Filed 12–29–14; 8:45 am]

**BILLING CODE 4710–09–P**

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## DEPARTMENT OF STATE

**[Public Notice 8985]**

## Provision of Certain Temporary and Limited Sanctions Relief in Order To Implement the Joint Plan of Action of November 24, 2013 Between the P5+1 and the Islamic Republic of Iran, as Extended Through June 30, 2015

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** On November 24, 2013, the United States and its partners in the P5+1—France, the United Kingdom, Russia, China, and Germany—reached an initial understanding with Iran, outlined in a Joint Plan of Action (JPOA),that halts progress on its nuclear program and rolls it back in key respects. In return, the P5+1 committed to provide limited, temporary, and targeted sanctions relief to Iran.

The JPOA was renewed by mutual consent of the P5+1 and Iran on July 19, 2014, and again on November 24, 2014, extending the temporary sanctions relief provided under the JPOA to cover the period beginning on November 24, 2014, and ending June 30, 2015 (the Extended JPOA Period), in order to continue negotiations aimed at achieving a long-term comprehensive solution to ensure that Iran's nuclear program will be exclusively peaceful.

This Notice outlines the U.S. Government (USG) actions taken to implement the sanctions relief aspects of this understanding.

**DATES:** *Effective Date:* The effective dates of these waiver actions are as described in the determinations set forth below.

**FOR FURTHER INFORMATION CONTACT:** On general issues: Paul Pavwoski, Office of Economic Sanctions Policy and Implementation, Department of State, Telephone: (202) 647–8836.

**SUPPLEMENTARY INFORMATION:** To implement this limited sanctions relief, the U.S. government has executed temporary, partial waivers of certain statutory sanctions and has issued guidance regarding the suspension of sanctions under relevant Executive Orders and regulations. All U.S. sanctions not explicitly waived or suspended pursuant to the JPOA as extended remain fully in force, including sanctions on transactions with individuals and entities on the SDN List unless otherwise specified.

Furthermore, U.S. persons and foreign entities owned or controlled by U.S. persons (''U.S.-owned or –controlled foreign entities'') continue to be generally prohibited from conducting transactions with Iran, including any transactions of the types permitted pursuant to the JPOA as extended, unless licensed to do so by OFAC. The U.S. government will continue to enforce U.S. sanctions laws and regulations against those who engage in sanctionable activities that are not covered by the suspensions and temporary waivers issued pursuant to the JPOA as extended.

All suspended sanctions are scheduled to resume on July 1, 2015 unless further action is taken by the P5+1 and Iran and subsequent waivers and guidance are issued by the U.S. government. Companies engaging in activities covered by the temporary sanctions relief should expect sanctions

to apply to any activities that extend beyond the current end date of the Extended JPOA Period, June 30, 2015. The temporary suspension of sanctions applies only to activities that begin and end during the period January 20, 2014 to June 30, 2015. Except as specified below with respect to payments for insurance claims, the suspension does not apply to any related, otherwise sanctionable conduct, including shipping and financial activities, undertaken before that period or after that period, even if they are undertaken pursuant to contracts entered into during the JPOA period or Extended JPOA Period. For example, deliveries of goods or services after the Extended JPOA Period would be sanctionable even if relevant contracts were entered into during the JPOA Period or Extended JPOA Period.

To the extent that the provision of insurance or reinsurance is an associated service of an activity for which the JPOA provides temporary relief, the provision of such insurance or reinsurance by a non-U.S. person not otherwise subject to the ITSR during the Extended JPOA Period would not be sanctionable.

Insurance payments for claims arising from incidents that occur during the JPOA Period and/or Extended JPOA Period may be paid after June 30, 2015, so long as the underlying transactions and activities conform to all other aspects of the sanctions remaining in place and the terms of the sanctions relief provided in the JPOA. Insurance and reinsurance companies should contact the USG directly with any inquiries.

U.S. persons and their foreign subsidiaries remain prohibited from participating in the provision of insurance or reinsurance services to or for the benefit of Iran or sanctioned entities, including with respect to all elements of the sanctions relief provided pursuant to the JPOA, unless specifically authorized by OFAC.

The Secretary of State took the following actions:

Acting under the authorities vested in me as Secretary of State, including through the applicable delegations of authority, I hereby make the following determinations and certifications:

Pursuant to Sections 1244(i), 1245(g), 1246(e), and 1247(f) of the Iran Freedom and Counter-Proliferation Act of 2012 (subtitle D of title XII of Pub. L. 112–239, 22 U.S.C. 8801 *et seq.*) (IFCA), I determine that it is vital to the national security of the United States to waive the imposition of sanctions pursuant to:

1. Section 1244(c)(1) of IFCA [1] to the extent required for:

a. Transactions by non-U.S. persons for the export from Iran of petrochemical products,[2] and for associated services, excluding any transactions involving persons on the list of specially designated nationals and blocked persons of the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury (hereinafter the SDN List) except for the following companies: Bandar Imam Petrochemical Company; Bou Ali Sina Petrochemical Company; Ghaed Bassir Petrochemical Products Company; Iran Petrochemical Commercial Company; Jam Petrochemical Company; Marjan Petrochemical Company; Mobin Petrochemical Company; National Petrochemical Company; Nouri Petrochemical Company; Pars Petrochemical Company; Sadaf Petrochemical Assaluyeh Company; Shahid Tondgooyan Petrochemical Company; Shazand Petrochemical Company; and Tabriz Petrochemical Company;

b. transactions by U.S. or non-U.S. persons for the supply and installation of spare parts necessary for the safety of flight for Iranian civil aviation, for safety-related inspections and repairs in Iran, and for associated services, provided that OFAC has issued any required licenses, excluding any transactions involving persons on the SDN List except for Iran Air;

c. transactions by non-U.S. persons to which sanctions would not apply if an exception under section 1244(g)(2) of IFCA were applied to China, India, Japan, the Republic of Korea, Taiwan, and Turkey, and for insurance and transportation services associated with such transactions, provided that such transactions are consistent with the purchase amounts provided for in the Joint Plan of Action of November 24, 2013, as extended, excluding any transactions or associated services involving persons on the SDN List except for the National Iranian Oil Company and the National Iranian Tanker Company;

d. transactions by non-U.S. persons for the sale, supply or transfer to or from Iran of precious metals, provided that such transactions are within the scope of the waiver of Sections 1245(a)(1)(A) and 1245(c) of IFCA (section 3 below), and for associated services, excluding any transactions involving persons on the SDN List except for any political subdivision, agency, or instrumentality of the Government of Iran listed solely pursuant to E.O. 13599;

2. Section 1244(d) of IFCA to the extent required for the sale, supply or transfer of goods or services by non-U.S. persons in connection with transactions by non-U.S. persons to which sanctions would not apply if an exception under section 1244(g)(2) of IFCA were applied to China, India, Japan, the Republic of Korea, Taiwan, and Turkey, and for insurance and transportation services associated with such transactions, provided that such transactions are consistent with the purchase amounts provided for in the Joint Plan of Action of November 24, 2013, as extended, excluding any transactions or associated services involving persons on the SDN List except for the National Iranian Oil Company and the National Iranian Tanker Company;

3. Sections 1245(a)(1)(A) and 1245(c) of IFCA to the extent required for transactions by non-U.S. persons for the sale, supply, or transfer to or from Iran of precious metals, provided that:

a. Such transactions do not involve persons on the SDN List, except for any political subdivision, agency, or instrumentality of the Government of Iran listed solely pursuant to E.O. 13599 or any Iranian depository institution listed solely pursuant to E.O. 13599; and

b. this waiver shall not apply to transactions for the sale, supply, or transfer to Iran of precious metals involving funds credited to an account located outside Iran pursuant to Section 1245(d)(4)(D)(ii)(II) of the National Defense Authorization Act for Fiscal Year 2012;

4. Section 1246(a) of IFCA [3] to the extent required for the provision of underwriting services or insurance or reinsurance:

a. By non-U.S. persons for the export from Iran of petrochemical products and for associated services, excluding any transactions involving persons on the SDN List except for the following companies: Bandar Imam Petrochemical Company; Bou Ali Sina Petrochemical Company; Ghaed Bassir Petrochemical

[1] Pursuant to section 1244(c)(2)(C)(iii) of IFCA, the relevant sanction in Section 1244(c)(1) continues not to apply, by its terms, in the case of Iranian financial institutions that have not been designated for the imposition of sanctions in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, support for international terrorism, or abuses of human rights (as described in section 1244(c)(3)).

[2] 77 FR 67726–67731 (Nov. 13, 2012).

[3] Pursuant to section 1246(a)(1)(C) of IFCA, the relevant sanction in section 1246(a)(1) continues not to apply, by its terms, in the case of Iranian financial institutions that have not been designated for the imposition of sanctions in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, support for international terrorism, or abuses of human rights (as described in section 1246(b)).

Products; Iran Petrochemical Commercial Company; Jam Petrochemical Company; Marjan Petrochemical Company; Mobin Petrochemical Company; National Petrochemical Company; Nouri Petrochemical Company; Pars Petrochemical Company; Sadaf Petrochemical Assaluyeh Company; Shahid Tondgooyan Petrochemical Company; Shazand Petrochemical Company; and Tabriz Petrochemical Company;

b. by U.S. persons or non-U.S. persons for the supply and installation of spare parts necessary for the safety of flight for Iranian civil aviation, for safety-related inspections and repairs in Iran, and for associated services, provided that OFAC has issued any required licenses, excluding any transactions involving persons on the SDN List except for Iran Air;

c. by non-U.S. persons for transactions to which sanctions would not apply if an exception under section 1244(g)(2) of IFCA were applied to China, India, Japan, the Republic of Korea, Taiwan, and Turkey, and for insurance and transportation services associated with such transactions, provided that such transactions are consistent with the purchase amounts provided for in the Joint Plan of Action of November 24, 2013, as extended, excluding any transactions or associated services involving persons on the SDN List except for the National Iranian Oil Company and the National Iranian Tanker Company; and

d. by non-U.S. persons for the sale, supply or transfer to or from Iran of precious metals, provided that such transactions are within the scope of the waiver of Sections 1245(a)(1)(A) and 1245(c) of IFCA, and for associated services, excluding any transactions involving persons on the SDN List except for any political subdivision, agency, or instrumentality of the Government of Iran listed solely pursuant to E.O. 13599;

e. by non-U.S. persons for the sale, supply or transfer to Iran of goods and services used in connection with the automotive sector of Iran and for associated services, excluding any transactions involving persons on the SDN List.

5. Section 1247(a) of IFCA[4] to the extent required for transactions by foreign financial institutions on behalf of:

a. Bandar Imam Petrochemical Company; Bou Ali Sina Petrochemical Company; Ghaed Bassir Petrochemical Products; Iran Petrochemical Commercial Company; Jam Petrochemical Company; Marjan Petrochemical Company; Mobin Petrochemical Company; National Petrochemical Company; Nouri Petrochemical Company; Pars Petrochemical Company; Shahid Tondgooyan Petrochemical Company; Sadaf Petrochemical Assaluyeh Company; Shahid Tondgooyan Petrochemical Company; Shazand Petrochemical Company; and Tabriz Petrochemical Company for the export from Iran of petrochemicals;

b. Iran Air for the supply and installation of spare parts necessary for the safety of flight by Iran Air and for safety-related inspections and repairs for Iran Air, provided that OFAC has issued any required licenses;

c. the National Iranian Oil Company and the National Iranian Tanker Company for transactions by non-U.S. persons to which sanctions would not apply if an exception under section 1244(g)(2) of IFCA were applied to China, India, Japan, the Republic of Korea, Taiwan, and Turkey, provided that such transactions are consistent with the purchase amounts provided for in the Joint Plan of Action of November 24, 2013, as extended, excluding any transactions or associated services involving any other persons on the SDN List; and

d. any political subdivision, agency, or instrumentality of the Government of Iran listed solely pursuant to E.O. 13599 for the sale, supply or transfer to or from Iran of precious metals, provided that such transactions are within the scope of the waiver of Sections 1245(a)(1)(A) and 1245(c) of IFCA.

Pursuant to section 1245(d)(5) of the National Defense Authorization Act for Fiscal Year 2012, I determine that it is in the national security interest of the United States to waive the imposition of sanctions under Section 1245(d)(1) with respect to:

(1) Foreign financial institutions under the primary jurisdiction of China, India, Japan, the Republic of Korea, the authorities on Taiwan, and Turkey, subject to the following conditions:

a. This waiver shall apply to a financial transaction only for trade in goods and services between Iran and the country with primary jurisdiction over the foreign financial institution involved in the financial transaction (but shall not apply to any transaction for the sale, supply, or transfer to Iran of precious metals involving funds credited to an account described in paragraph (b));

b. any funds owed to Iran as a result of such trade shall be credited to an account located in the country with primary jurisdiction over the foreign financial institution involved in the financial transaction; and

c. with the exception that certain foreign financial institutions notified directly in writing by the U.S. Government may engage in financial transactions with the Central Bank of Iran in connection with the repatriation of revenues and the establishment of a financial channel, to the extent specifically provided for in the Joint Plan of Action of November 24, 2013, as extended; and

(2) foreign financial institutions under the primary jurisdiction of Switzerland and Oman that are notified directly in writing by the U.S. Government, to the extent necessary for such foreign financial institutions to engage in financial transactions with the Central Bank of Iran in connection with the repatriation of revenues and the establishment of a financial channel as specifically provided for in the Joint Plan of Action of November 24, 2013, as extended.

Pursuant to Section 4(c)(1)(A) of the Iran Sanctions Act of 1996 (Pub. L. 104–172, 50 U.S.C. 1701 note) (ISA), I certify that it is vital to the national security interests of the United States to waive the application of section 5(a)(7) of ISA to the National Iranian Oil Company and the National Iranian Tanker Company to the extent required for insurance and transportation services provided on or after November 24, 2014, and associated with transactions to which sanctions would not apply if an exception under section 1244(g)(2) of IFCA were applied to China, India, Japan, the Republic of Korea, Taiwan, and Turkey, provided that such transactions are consistent with the purchase amounts provided for in the Joint Plan of Action of November 24, 2013, as extended.

These waivers shall take effect upon their transmittal to Congress, unless otherwise provided in the relevant provision of law.

(Signed John F. Kerry, Secretary of State)

Therefore, these sanctions have been waived as described in the determinations above. Relevant agencies and instrumentalities of the United States Government shall take all appropriate measures within their authority to carry out the provisions of this notice.

[4] Pursuant to section 1247(a) of IFCA, the relevant sanction in section 1247(a) still continues not to apply, by its terms, in the case of Iranian financial institutions that have not been designated for the imposition of sanctions in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, support for international terrorism, or abuses of human rights (as described in section 1247(b)).

Dated: December 10, 2014.

**Charles H. Rivkin,**

*Assistant Secretary for Economic and Business Affairs.*

[FR Doc. 2014–30569 Filed 12–29–14; 8:45 am]

**BILLING CODE 4710–07–P**

## TENNESSEE VALLEY AUTHORITY

### Meeting of the Regional Energy Resource Council

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Notice of meeting.

**SUMMARY:** The TVA Regional Energy Resource Council (RERC) will hold a meeting on Monday, February 2 and Tuesday, February 3, 2015, regarding regional energy related issues in the Tennessee Valley.

The RERC was established to advise TVA on its energy resource activities and the priorities among competing objectives and values. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

The meeting agenda includes the following:

1. Welcome and Introductions
2. Recap of October 2014 meeting
3. Presentations and discussion regarding TVA's Integrated Resource Planning process and an overview of preliminary results
4. Distributed Generation—Integrated Value project overview
5. Public Comments
6. Council discussion and advice

The RERC will hear opinions and views of citizens by providing a public comment session. The public comment session will be held at 9:00 a.m. EST, on February 3. Persons wishing to speak are requested to register at the door by 8:30 a.m. on Tuesday, February 3 and will be called on during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Energy Resource Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT–9 D, Knoxville, Tennessee 37902.

**DATES:** The meeting will be held on Monday, February 2, 2015 from 10:30 a.m. to 4:45 p.m. and Tuesday, February 3, 2015, from 8:30 a.m. to 1:30 p.m. EST.

**ADDRESSES:** The meeting will be held at the Chattanoogan Hotel, 1201 Broad Street, Chattanooga, TN 37402, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

**FOR FURTHER INFORMATION CONTACT:** Beth Keel, 400 West Summit Hill Drive, WT–9 D, Knoxville, Tennessee 37902, (865) 632–6113.

Dated: December 19, 2014.

**Joseph J. Hoagland,**

*Vice President, Stakeholder Relations, Tennessee Valley Authority.*

[FR Doc. 2014–30287 Filed 12–29–14; 8:45 am]

**BILLING CODE 8120–08–P**

## TENNESSEE VALLEY AUTHORITY

**[Meeting No. 14–05]**

### Sunshine Act Meeting Notice

December 30, 2014.

The TVA Board of Directors will hold a public meeting on December 30, 2014, at 10 a.m. Eastern Time via Webcast. In order to join the Webcast, participants may log in as early as 9:50 a.m. ET. You can access the Webcast by going to: *http://services.choruscall.com/links/tva141230.html* (this link is also on the Board of Directors' page on TVA's Web site—*www.tva.gov*). Closed Captioning will be available for viewing.

Participants who are unable to view the Webcast, may dial into the call at 1–877–270–2148 or 412–902–6510 and ask for the TVA Board Meeting Call.

The Webcast will be available to view after the event occurs, and can be accessed on the Board of Directors' page on TVA's Web site.

*Status:* Open.

**Agenda**

Chair's Welcome

*New Business*

1. Report of the Finance, Rates, and Portfolio Committee
   A. Generation Fleet Planning—Shawnee Fossil Plant Units 1 and 4
2. Committee Assignments

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: December 23, 2014.

**Ralph E. Rodgers,**

*General Counsel and Secretary.*

[FR Doc. 2014–30652 Filed 12–24–14; 4:15 pm]

**BILLING CODE 8120–08–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Consensus Standards, Inspection and Maintenance of Aircraft Electrical Wiring Systems

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** This notice announces the availability of two revised consensus standards relating to inspection and maintenance of aircraft electrical wiring systems. ASTM International Committee F39 on Aircraft Systems developed the revised standards with Federal Aviation Administration (FAA) participation. The consensus standards provide acceptable methods and procedures for inspection and maintenance of electrical wiring systems for normal, utility, acrobatic, and commuter category airplanes. By this notice, the FAA finds the revised standards as acceptable means of compliance to 14 CFR part 23 sections concerning electrical wiring systems.

**DATES:** Comments must be received on or before January 29, 2015.

**ADDRESSES:** Mail comments to: Federal Aviation Administration, Small Airplane Directorate, Continued Operational Safety, ACE–111, Attention: James Brady, Room 301, 901 Locust, Kansas City, Missouri 64106. Specify the standard being addressed by ASTM designation and title. Mark all comments: Consensus Standards Comments.

**FOR FURTHER INFORMATION CONTACT:** James Brady, Aerospace Engineer, Regulations and Policy Branch (ACE–111), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4132; email: *james.brady@faa.gov.*

**SUPPLEMENTARY INFORMATION:** This notice announces the availability of two revised consensus standards that supersede previously accepted consensus standards relating to inspection and maintenance of aircraft electrical wiring systems. ASTM International Committee F39 on Aircraft Systems developed the revised standards. The FAA expects a suitable consensus standard to be reviewed periodically. This review cycle will result in a standard revision or reapproval. A standard is revised to make changes to its technical content or is reapproved to indicate a review cycle

has been completed with no technical changes. A standard is issued under a fixed designation (*e.g.,* F2696); the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses following the year of original adoption or revision indicates the year of last reapproval. For example, F2353–05(2013) designates a standard that was originally adopted (or revised) in 2005 and reapproved in 2013. A superscript epsilon (ε) indicates an editorial change since the last revision or reapproval. A notice of availability (NOA) will only be issued for new or revised standards. Reapproved standards issued with no technical changes or standards issued with editorial changes only (*i.e.,* superscript epsilon (ε)) are considered accepted by the FAA without need for an NOA.

*Comments Invited:* Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the consensus standard number and be submitted to the address specified above. All standards-related comments received on or before the closing date for comments will be forwarded to ASTM International Committee F39 for consideration. The standard may be changed in light of the comments received. The FAA will address all comments received during the recurring review of the consensus standard and will participate in the consensus standard revision process.

*Background:* Under the provisions of the revised Office of Management and Budget (OMB) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' dated February 10, 1998, industry and the FAA have been working with ASTM International to develop consensus standards for the design, fabrication, modification, inspection, and maintenance of electrical systems installed on normal and utility category airplanes.

These consensus standards satisfy the FAA's goal for airworthiness certification and a verifiable minimum safety level for normal, utility, acrobatic, and commuter category airplanes. The FAA participates as a member of Committee F39 in developing these standards. The use of the consensus standard process assures government and industry discussion and agreement on appropriate standards for the required level of safety.

**The Consensus Standards**

The FAA finds the following new consensus standards acceptable for normal, utility, acrobatic, and commuter category airplanes. The consensus standards listed below may be used unless the FAA publishes a specific notification otherwise.

ASTM Designation F2696–14, titled: Standard Practice for Inspection of Aircraft Electrical Wiring Systems

ASTM Designation F2799–14, titled: Standard Practice for Maintenance of Aircraft Electrical Wiring Systems

**Availability**

ASTM International, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959 copyrights these consensus standards. Individual reprints of this standard (single or multiple copies, or special compilations and other related technical information) may be obtained by contacting ASTM at this address, or at (610) 832–9585 (phone), (610) 832–9555 (fax), through *service@astm.org* (email), or through the ASTM Web site at *http://www.astm.org.* To inquire about standard content and/or membership or about ASTM International Offices abroad, contact Christine DeJong, Staff Manager for Committee F39 on Aircraft Systems: (610) 832–9736, *cdejong@astm.org.*

Issued in Kansas City, Missouri, on December 16, 2014.

**Earl Lawrence,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2014–30563 Filed 12–29–14; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2014–142]**

### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATE:** Comments on this petition must identify the petition docket number and must be received on or before January 20, 2015.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2014–0935 using any of the following methods:

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.
- Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Terry Chasteen, ACE–114, 901 Locust St., Room 301, ACE–114, Kansas City, MO 64106; email *terry.chasteen@faa.gov;* (816) 329–4147.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 22, 2014.

**James M. Crotty,**

*Acting Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2014–0935.

*Petitioner:* Terrafugia, Inc.

*Section of 14 CFR Affected:* 14 CFR 21.175, 43.1, 61.1, 61.325, 21.181, 43.3,

61.23, 61.327, 21.182, 43.7, 61.31, 61.403, 21.190, 61.45, 61.405, 21.191, 61.89, 61.411, 21.193, 61.113, 61.415, 61.303, 61.417, 61.305, 61.419, 61.315, 61.423, 61.317, 61.429, 61.321.

*Description of Relief Sought:* The petitioner requests relief from parts 21, 43, and 61 to permit its (roadable aircraft) vehicle, a maximum operating weight of 1800 pounds and stall speed of 54 knots, so that it may be treated as a light-sport aircraft for the purposes of design, airworthiness, production, operation, training, and maintenance.

[FR Doc. 2014–30635 Filed 12–29–14; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Highway in California

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

**ACTION:** Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327 and the United States Army Corps of Engineers (USACE).

**SUMMARY:** The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project on State Route 76 (SR–76) from postmile 32.6 to 33.2 in the County of San Diego, State of California. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 29, 2015. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** For Caltrans: Olga Estrada, Chief, Environmental Branch A, California Department of Transportation—District 11, 4050 Taylor Street, San Diego, CA 92110, 8 a.m. to 5 p.m., 619–688–0229, *Olga.Estrada@dot.ca.gov.*

**SUPPLEMENTARY INFORMATION:** Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The project is located in San Diego County in SR–76 from 0.2 miles west of Rincon Springs Road to 0.1 mile west of Water Mountain Road (postmile 32.6–33.2). The project would perform safety improvements to the intersection of SR–76 and Valley Center Road by upgrading the intersection and realigning the roadways adjacent to the intersection. The preferred alternative would install a roundabout at the SR–76/Valley Center Road juncture. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA) for the project, approved on October 28, 2014, in the FHWA Finding of No Significant Impact (FONSI) issued on October 28, 2014, and in other documents in the FHWA project records. The Final Initial Study with Mitigated Negative Declaration (IS/MND), EA/FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans Final IS/MND and EA/FONSI can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist11/* or viewed at public libraries in the project area. Pending Federal actions include:

- 401 Water Quality Certification from the Regional Water Quality Control Board, under Section 401 of the Clean Water Act
- 402 Permit for point source discharge of pollutant, under Section 402 of the Clean Water Act
- 404 Permit pursuant to the *Memorandum of Understanding among the FHWA; Caltrans, USACOE, U.S. Fish and Wildlife Service and the National Marine Fisheries Service for the National Environmental Policy Act and the Clean Water Act Section 404 Integration Process for Federal Aid Surface Transportation Projects in California* (NEPA/404 MOU)

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to

1. Council on Environmental Quality regulations;
2. National Environmental Policy Act (NEPA);
3. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU);
4. Department of Transportation Act of 1966;
5. Federal Aid Highway Act of 1970;
6. Clean Air Act Amendments of 1990;
7. Clean Water Act of 1977 and 1987;
8. Endangered Species Act of 1973;
9. Migratory Bird Treaty Act;
10. Farmland Protection Policy Act of 1981;
11. Title VI of the Civil Rights Act of 1964;
12. Uniform Relocation Assistance and Real Property Acquisition Act of 1970;
13. National Historic Preservation Act of 1966;
14. Historic Sites Act of 1935;
15. Executive Order 11990, Protection of Wetlands
16. Executive Order 13112, Invasive Species;
17. Executive Order 11988, Floodplain Management; and,
18. Executive Order 12898, Environmental Justice.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(*l*)(1).

Issued on: December 19, 2014.

**Jacob R. Waclaw,**

*Senior Transportation Engineer, Federal Highway Administration, Los Angeles, California.*

[FR Doc. 2014–30286 Filed 12–29–14; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### National Highway Traffic Safety Administration

**[FHWA Docket No. FHWA–2014–0032]**

### Retrospective Regulatory Review—State Safety Plan Development and Reporting

**AGENCY:** Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

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

**SUMMARY:** The FHWA and NHTSA are extending the comment period for a notice and request for comment which was published on November 28, 2014, at 79 FR 70914. The original comment

period is set to close on December 29, 2014. The extension is based on concern expressed by the American Association of State Highway and Transportation Officials (AASHTO) that the December 29 closing date does not provide sufficient time to review and provide comprehensive comments on the notice. The FHWA and NHTSA recognize that others interested in commenting may have similar concerns and agrees that the comment period should be extended. Therefore, the closing date for comments is changed to February 15, 2015, which will provide stakeholders interested in commenting additional time to discuss, evaluate, and submit responses to the docket.

**DATES:** Comments must be received on or before February 15, 2015.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue SE., Washington, DC 20590, or submit electronically at *http://www.regulations.gov*. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. 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.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** For questions about the program discussed herein, contact Melonie Barrington, FHWA Office of Safety, (202) 366–8029, or via email at *Melonie.Barrington@dot.gov*; or Barbara Sauers, NHTSA Office of Regional Operations and Program Delivery, (202) 366–0144, or via email at *Barbara.Sauers@dot.gov*. For legal questions, please contact William Winne, Attorney-Advisor, FHWA Office of the Chief Counsel, (202) 366–1397, or via email at *William.winne@dot.gov*; or Jin H. Kim, Attorney-Advisor, NHTSA Office of the Chief Counsel, (202) 366–1834, or via email at *Jin.Kim@dot.gov*. Business hours for the DOT are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access and Filing

You may submit or access all comments received by DOT online through: *http://www.regulations.gov*. Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded from the **Federal Register**'s home page at: *http://www.federalregister.gov*.

### Background

On November 28, 2014, FHWA and NHTSA published in the **Federal Register** a notice and request for comment on actions the agencies could take without statutory changes to better streamline and harmonize State highway safety plan development and reporting requirements. The notice seeks comments from all interested parties to help evaluate potential future courses of action.

The original comment period for the notice closes on December 29, 2014. The AASHTO has expressed concern that this closing date does not provide sufficient time to review and provide comprehensive comments and has requested the comment period be extended to February 15, 2015. The agencies recognize that others interested in commenting may have similar concerns and agree that the comment period should be extended. To allow time for this organization and others to submit comprehensive comments, the closing date is changed from December 29, 2014, to February 15, 2015.

**Gregory G. Nadeau,**

*Acting Administrator, Federal Highway Administration.*

**David J. Friedman,**

*Deputy Administrator, National Highway Traffic Safety Administration.*

[FR Doc. 2014–30570 Filed 12–29–14; 8:45 am]

**BILLING CODE 4910–22–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

**[Docket No. FRA–2014–0011–N–24]**

## Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the renewal Information Collection Requests (ICRs) abstracted below arebeing forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on October 17, 2014 (79 FR 62513).

**DATES:** Comments must be submitted on or before January 29, 2015.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 25, Washington, DC 20590 (Telephone: (202) 493–6292), or 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:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On October 17, 2014, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICR that the agency is seeking OMB approval. *See* 79 FR 62513. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should

submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requests (ICRs) and the expected burden. The revised request is being submitted for clearance by OMB as required by the PRA.

*Title:* Inspection Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment (Power Brakes and Drawbars).

*OMB Control Number:* 2130–0008.

*Abstract:* Section 7 of the Rail Safety Enforcement and Review Act of 1992, Public Law 102–365, amended Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 421, 431 *et seq.*), empowered the Secretary of Transportation to conduct a review of the Department's rules with respect to railroad power brakes and, where applicable, prescribe standards regarding dynamic brake equipment. In keeping with the Secretary's mandate and the authority delegated from him to the FRA Administrator, FRA issued revisions to the regulations governing freight power brakes and equipment in October 2008 by adding a new subpart addressing electronically controlled pneumatic (ECP) brake systems. The revisions are designed to provide for and encourage the safe implementation and use of ECT brake system technologies. These revisions contain specific requirements relating to design, interoperability, training, inspection, testing, handling defective equipment and periodic maintenance related to ECP brake systems. The final rule also identifies provisions of the existing regulations and statutes where FRA is proposing to provide flexibility to facilitate the voluntary adoption of this advanced brake system technology. The collection of information is used by FRA to monitor and enforce current regulatory requirements related to power brakes on freight cars as well as the recently added requirements related to ECP brake systems. The collection of information is also used by locomotive engineers and road crews to verify that the terminal air brake test has been performed in a satisfactory manner.

*Type of Request:* Extension without change of a currently approved information collection.

*Affected Public:* Businesses (Railroads).

*Form(s):* N/A.

*Annual Estimated Burden:* 991,451 hours.

*Title:* Occupational Noise Exposure for Railroad Operating Employees.

*OMB Control Number:* 2130–0571.

*Abstract:* The collection of information is used by FRA to ensure that railroads covered by this rule establish and implement—by specified dates—noise monitoring, hearing conservation, and audiometric testing programs, as well as hearing conservation training programs, to protect their employees against the damaging and potentially dangerous effects of excessive noise in the everyday rail environment.

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

*Affected Public:* Businesses (Railroads).

*Form(s):* N/A.

*Annual Estimated Burden:* 30,331 hours.

*Addressee:* Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC, 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov.*

*Comments are invited on the following:* Whether the proposed collections of information are 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 estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501–3520.

**Rebecca Pennington,**

*Chief Financial Officer.*

[FR Doc. 2014–30247 Filed 12–29–14; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[FRA–2014–0090]**

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated September 19, 2014, the Central States Steam Preservation Association (CSSPA) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 230, Steam Locomotive Inspection and Maintenance Standards. FRA assigned the petition Docket Number FRA–2014–0090. CSSPA is a nonprofit organization based in Iowa that maintains and operates two Chinese 2–10–2 steam locomotives, Numbers 6988 and 7081. CSSPA plans to operate the 6988 steam engine in 2015 on the Iowa Interstate Railroad (IAIS) and possibly other railroads in the Midwest. The engines are based on the IAIS in Newton, IA. The Railroad Development Corporation still maintains ownership of the two steam engines at this time, but plans to donate the engines to CSSPA in the near future.

CSSPA requests relief from performing the fifth annual inspection as it pertains to the inspection of flexible staybolt caps every 5 years, as required by 49 CFR 230.41(a), and requests to extend the inspection interval to the eighth annual inspection. CSSPA will perform all other inspections as required by 49 CFR 230.16, Annual Inspection. CSSPA's justification for requesting this relief is that the current level of safety would be maintained due to the low number of service days accrued in this engine since the last flexible staybolt cap inspection. There will be significant cost savings, as the CSSPA shop forces would not be required to remove the cab, piping, jacketing, and insulation to gain access to the caps to perform the flexible staybolt cap inspection.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by February 13, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC, on December 23, 2014.

**Ron Hynes,**

*Director, Office of Technical Oversight.*

[FR Doc. 2014–30465 Filed 12–29–14; 8:45 am]

**BILLING CODE 4910–06–P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2014–0100; Notice 2]**

### Reports, Forms, and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**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 soliciting public comment on the ICR, with a 60-day comment period was published on September 26, 2014, at 79 FR 58029.

**DATES:** Comments must be submitted on or before January 29, 2015.

**FOR FURTHER INFORMATION CONTACT:** Coleman Sachs, Office of Vehicle Safety Compliance (NVS–223), National Highway Traffic Safety Administration, West Building—4th Floor—Room W45–205, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. Sachs' telephone number is (202) 366–3151.

**SUPPLEMENTARY INFORMATION:**

### National Highway Traffic Safety Administration

*Title:* Consolidated Labeling Requirements for 49 CFR parts Vehicle Identification Number (VIN) Requirements, and 567 Certification.

*OMB Number:* 2127–0510.

*Type of Request:* Extension of a Currently Approved Collection.

*Abstract:*

**Part 565**

The regulations in part 565 specify the format, contents, and physical requirements for a vehicle identification number (VIN) system and its installation to simplify vehicle identification information retrieval and to increase the accuracy and efficiency of vehicle recall campaigns. The regulations require each vehicle manufactured in one stage to have a VIN that is assigned by the vehicle's manufacturer. Each vehicle manufactured in more than one stage is to have a VIN assigned by the incomplete vehicle manufacturer. Each VIN must consist of 17 characters, including a check digit, in the ninth position, whose purpose is to verify the accuracy of any VIN transcription. The VIN must also incorporate the world manufacturer identifier or WMI assigned to the manufacturer by the competent authority in the country where the manufacturer is located. The WMI occupies the first three characters of the VIN for manufacturers that produce 1,000 or more vehicles of a specified type within a model year, and positions 1, 2, 3, 12, 13, and 14 of VINs assigned by manufacturers that produce less than 1,000 vehicles of a specified type per model year. The remaining characters of the VIN describe various vehicle attributes, such as make, model, and type, which vary depending on the vehicle's type classification (*i.e.* passenger car, multipurpose passenger vehicle, truck, bus, trailer, motorcycle, low-speed vehicle), and identify the vehicle's model year, plant code, and sequential production number. NHTSA has contracted with SAE International of Warrendale, Pennsylvania, to coordinate the assignment of WMIs to manufacturers in the United States. Each manufacturer of vehicles subject to the requirements of part 565 must submit, either directly or through an agent, the unique identifier for each make and type of vehicle it manufactures at least 60 days before affixing the first VIN using the identifier. Manufacturers are also required to submit to NHTSA information necessary to decipher the characters contained in their VINs, including amendments to that information, at least 60 days prior to offering for sale the first vehicle identified by a VIN containing that information or if information concerning vehicle characteristics sufficient to specify the VIN code is unavailable to the manufacturer by that date, then within one week after that information first becomes available.

**Part 567**

The regulations in part 567 specify the content and location of, and other requirements for, the certification label to be affixed to a motor vehicle, as required by the National Traffic and Motor Vehicle Safety Act, as amended (the Vehicle Safety Act) (49 U.S.C. 30115) and the Motor Vehicle Information and Cost Savings Act, as amended (the Cost Savings Act) (49 U.S.C. 30254 and 33109), to address certification-related duties and liabilities, and to provide the consumer with information to assist him or her in determining which of the Federal Motor Vehicle Safety Standards (as found in 49 CFR part 571), Bumper Standards (as found in 49 CFR part 581, and Federal Theft Prevention Standards (as found in 49 CFR part 541) are applicable to the vehicle. The regulations pertain to manufacturers of motor vehicles to which one or more standards are applicable, including persons who alter such vehicles prior to their first retail sale, and to Registered Importers of vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards that are determined eligible for importation by NHTSA, based on the vehicles' capability of being modified to conform to those standards. The regulations require each manufacturer to affix to each vehicle, in a prescribed location, a

label that, among other things, identifies the vehicle's manufacturer (defined as the person who actually assembles the vehicle), the vehicle's date of manufacture, and the statement that the vehicle complies with all applicable Federal motor vehicle safety standards and, where applicable, Bumper and Theft Prevention Standards in effect on the date of manufacture. The label must also include the vehicle's gross vehicle and gross axle weight ratings (GVWR and GAWRs), vehicle identification number, and vehicle type classification (*i.e.,* passenger car, multipurpose passenger vehicle, truck, bus, trailer, motorcycle, low-speed vehicle). The regulations specify other labelling requirements for incomplete vehicle, intermediate, and final-stage manufacturers of vehicles built in two or more stages, such as commercial trucks that are built by adding work performing components, such as a cargo box or cement mixer, to a previously manufactured chassis or chassis-cab, and to persons who alter previously certified vehicles, other than by the addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assemblies, or minor finishing operation such as painting, before the first purchase of the vehicle for purposes other than resale.

*Affected Public:* Motor vehicle manufacturers, including incomplete vehicle manufacturers and intermediate and final-stage manufacturers of vehicles built in two or more stages, vehicle alterers, and Registered Importers of motor vehicles that are not originally manufactured to comply with all applicable Federal motor vehicle safety standards.

*Estimated Total Annual Burden:* 542 hours and $16,200 for supplying required VIN-deciphering information to NHTSA under part 565; 60,000 hours and $12,000,000 for meeting the labeling requirements of part 567.

**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.

*Comments are Invited On:* 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; the accuracy of the Agency'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.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

**Nancy Lummen Lewis,**

*Associate Administrator for Enforcement.*

[FR Doc. 2014–30239 Filed 12–29–14; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, U.S. Department of Transportation.

**ACTION:** Notice; correction.

**SUMMARY:** This document corrects the docket number in a **Federal Register** notice published on Tuesday, November 25, 2014, that announced a request for public comment on proposed collection of information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Randy Reid, U.S. Department of Transportation, NHTSA, Room W48–311, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. Reid's telephone number is (202) 366–4383 and his email address is *randy.reid@dot.gov*.

**Correction**

In the **Federal Register** of November 25, 2014, in FR Doc. 2014–2127–0008, on page 70275, column 1 needs to be read:

U.S. DOT Docket No. NHTSA–2014–0124.

**Correction**

In the **Federal Register** of November 25, 2014, in FR Doc. 2014–2127–0008, on page 70275, column 2 before the Title: Consumer Complaint Information, needs to read:

OMB Control Number: 2127–0008

Issued on: November 25, 2014.

**Randy Reid,**

*Chief, Correspondence Research Division, Office of Defects Investigation.*

[FR Doc. 2014–30310 Filed 12–29–14; 8:45 am]

**BILLING CODE P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2014–0046; Notice 2]**

### Chrysler Group, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition.

**SUMMARY:** Chrysler Group, LLC, (Chrysler), now known as Fiat Chrysler Automobiles NV, has determined that certain model year (MY) 2014 Jeep Cherokee multipurpose passenger vehicles (MPV), and MY 2013–2014 Dodge Dart passenger cars (PC) do not fully comply with paragraph S5.2.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays* and paragraph S5.5.5 of FMVSS No. 135,[1] *Light Vehicle Brake Systems*. Chrysler has filed an appropriate report dated March 4, 2014 pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

**ADDRESSES:** For further information on this decision contact Stuart Seigel, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5287, facsimile (202) 366–5930.

**SUPPLEMENTARY INFORMATION:**

*I. Chrysler's Petition:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556), Chrysler has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of Chrysler's petition was published, with a 30-Day public comment period, on June 30, 2014 in the **Federal Register** (79 FR 36868). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/*. Then follow the online search instructions to locate docket number ''NHTSA–2014–0046.''

*II. Vehicles Involved:* Affected are vehicles built for the U.S. territories, approximately 411 MY 2014 Jeep

[1] Subsequent to receiving Chrysler's petition, NHTSA was notified by the petitioner that it had inadvertently referred to FMVSS No. 105, a standard that does not apply to the subject vehicles, in its petition.

Cherokee MPV manufactured between June 17, 2013 and January 14, 2014 and 22 MY 2013–2014 Dodge Dart PC manufactured between July 1, 2012 and December 13, 2013.

*III. Noncompliance:* Chrysler explains that the noncompliance is that the telltale used for Brake Warning and Park Brake Warning is displayed using International Organization for Standardization (ISO) symbols instead of the telltale symbol required by S5.2.1 of FMVSS No. 101 and paragraph S5.5.5 of FMVSS No. 135.

*IV. Rule Text:* Paragraph S5.2.1 of FMVSS No. 101 requires in pertinent part:

S5.2.1 Except for the Low Tire Pressure Telltale, each control, telltale and indicator that is listed in column 1 of Table 1 or Table 2 must be identified by the symbol specified for it in column 2 or the word or abbreviation specified for it in column 3 of Table 1 or Table 2. If a symbol is used, each symbol provided pursuant to this paragraph must be substantially similar in form to the symbol as it appears in Table 1 or Table 2. If a symbol is used, each symbol provided pursuant to this paragraph must have the proportional dimensional characteristics of the symbol as it appears in Table 1 or Table 2.

Paragraph S5.5.5 of FMVSS No. 135 requires in pertinent part:

S5.5.5. Labeling. (a) Each visual indicator shall display a word or words in accordance with the requirements of Standard No. 101 (49 CFR 571.101) and this section, which shall be legible to the driver under all daytime and nighttime conditions when activated. Unless otherwise specified, the words shall have letters not less than 3.2 mm (⅛inch) high and the letters and background shall be of contrasting colors, one of which is red. Words or symbols in addition to those required by Standard No. 101 and this section may be provided for purposes of clarity.

(b) Vehicles manufactured with a split service brake system may use a common brake warning indicator to indicate two or more of the functions described in S5.5.1(a) through S5.5.1(g). If a common indicator is used, it shall display the word ''Brake.''. . .

*V. Summary of Chrysler's Analyses:* Chrysler stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. Chrysler notes that the purpose of the brake telltale is to warn the operator about either one of two conditions: (1) The parking brake is applied or is malfunctioning; or (2) the service brakes may be malfunctioning. The affected vehicles ''brake display telltale'' illuminates in red as required and, except for the missing identifier word ''Brake,'' the vehicles comply with all other applicable FMVSS requirements. When the telltale is not illuminated, there is no degradation of brake performance. All braking system functionality, including service brakes and the parking brake is unaffected by this noncompliance and the subject vehicles will operate as intended. Even though the word ''Brake'' is not used, Chrysler's stated its belief that in the event one of the affected vehicles displayed the red-color ISO brake telltale, the driver would recognize a possible brake system malfunction.

2. Chrysler states that the telltale functions as both the vehicle's brake system symbol and the parking brake symbol. In the Dart, the parking brake is engaged by pulling up on the parking brake handle in view of the instrument cluster where the brake telltale is illuminated. In the Cherokee, the parking brake is electronic where a 5 second ''Parking Brake Engaged'' message is displayed in the Electronic Vehicle Information Center (EVIC) and the brake telltale is illuminated in the instrument cluster. The brake telltale also illuminates during the cluster warning lamp function check. Due to the ISO telltale illumination during parking brake engagement and during lamp function checks, an operator is conditioned to associate the telltale with the braking system and would be alerted in the event of a possible brake system malfunction. In the unlikely event the ISO brake telltale is illuminated and the operator does not understand its meaning, the ISO brake telltale graphic is shown and described in the Owner's Manual for both vehicles. Thus, an operator could easily determine that the ISO telltale relates to the brake system.

3. Chrysler also believes that in the subject vehicles, in the event the brake fluid level is less than the recommended level, the brake telltale is illuminated and the EVIC will display a five second ''Brake Fluid Low'' message that continues until the condition is corrected. This additional visual input to the operator helps facilitate the association of the telltale with the braking system.

4. Chrysler has stated its belief that NHTSA has previously granted a similar inconsequential noncompliance petition regarding the use of ISO symbols.

5. Chrysler is not aware of any warranty claims, field reports, consumer complaints, legal claims or any incidents or injuries related to the subject noncompliance.

Chrysler has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 101 and FMVSS No. 135.

In summation, Chrysler believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt Chrysler from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

**NHTSA Decision**

*NHTSA Analysis:* NHTSA has reviewed Chrysler's justification for an inconsequential noncompliance decision and agrees that, based on the following analysis, the inadvertent use of an ISO label on the combined brake telltale for Brake Warning and the Park Brake Warning, poses little if any risk to motor vehicle safety.

Chrysler stated that there are two conditions which will cause the subject combined brake warning telltale that is located on the instrument cluster and labeled with an ISO symbol instead of the required text ''BRAKE'', to illuminate:

1. The parking brake is applied; and/or

2. The brake fluid level is less than the recommended level.

For each condition, the subject combined telltale is illuminated as required with the background in contrasting colors, one of which is red.

In the Cherokee, the parking brake is engaged electronically and a 5 second ''Parking Brake Engaged'' message is displayed in the Electronic Vehicle Information Center. For the Dart, the parking brake is activated by pulling up on the parking brake handle which remains visible to the driver.

In the Dart and Cherokee vehicles, in the event the brake fluid is less than the recommended level, in addition to the ISO symbol illumination, redundant notification is provided to the driver of the existence of the condition by the Electronic Vehicle Information Center which displays a five second ''Brake Fluid Low'' message that continues until the condition is corrected.

NHTSA agrees with Chrysler's statement that the functionality of both the parking brake system and the service brake system remains unaffected by the mislabeling. Vehicle stopping distance and thus collision avoidance is not compromised due to the mislabeling.

The ISO symbol has been used on US-certified vehicles for many years in conjunction with the required text ''BRAKE.'' In addition, each time the driver activates the parking brake he/she will visually be reminded of the meaning of the ISO symbol. The parking brake activation and the representative ISO symbol are operationally linked. The ISO symbol is also illuminated

during lamp function each time the vehicle is started. If not familiar with its meaning, the owner's manual can be referenced which will explain the relationship with the brake system. Over time, the ISO symbol has evolved to become increasingly recognizable and understandable to drivers so if activated they would likely be alerted to a possible brake system malfunction. We further believe drivers recognize that a telltale illuminated in red, even if unlabeled, represents a malfunction which needs to be remedied.

We believe that the combination of the red contrasting color of the ISO symbol, driver conditioning over time as to the meaning of the ISO symbol, the vehicle message center warning for the Cherokee indicating parking brake applied, the noticeable position of the DART parking brake lever when applied, the reduced drivability of the vehicles when the vehicle is driven with an applied parking brake, the message center warning ''Low Brake Fluid'' for both vehicles which remains activated until the condition is corrected, as well as the availability of the description of ISO symbol in the Owner's manual are sufficient to adequately alert the driver should the indicated problems in the braking system occur.

The manufacturer has shown that the discrepancy with the labeling requirement is unlikely to lead to any misunderstanding especially since other sources of correct information beyond the ISO symbol, are available. Lastly, we note that NHTSA has not received any consumer complaints regarding subject vehicles noncompliances.

*NHTSA Decision:* In consideration of the foregoing, NHTSA has decided that Chrysler has met its burden of persuasion that the FMVSS No. 101 and FMVSS No. 135 noncompliances are inconsequential to motor vehicle safety. Accordingly, Chrysler's petition is hereby granted and Chrysler is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Chrysler no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve Chrysler distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Chrysler notified them that the subject noncompliance existed.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

**Jeffrey M. Giuseppe,**

*Acting Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2014–30240 Filed 12–29–14; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2014–0095; Notice 2]**

### Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition.

**SUMMARY:** Michelin North America, Inc. (MNA) has determined that certain Michelin Pilot Street Radial replacement motorcycle tires, do not fully comply with paragraph S6.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 kilograms (10,000 pounds) and Motorcycles.* MNA has filed an appropriate report dated July 3, 2014, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

**ADDRESSES:** For further information on this decision contact Abraham Diaz, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5310, facsimile (202) 366–5930.

**SUPPLEMENTARY INFORMATION:** *I. MNA's Petition:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, MNA has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on September 23, 2014 in the **Federal Register** (FR 56852). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2014–0095.''

*II. Tires Involved:* Affected are approximately 889 Michelin Pilot Street Radial motorcycle tires, involving a total of three dimensions (110/70 R17 54H, 130/70 R17 62H, and 140/70 R17 66H), that were manufactured between August 12, 2012 and December 21, 2013 in Phrapradaeng, Thailand.

*III. Noncompliance:* MNA explains that the noncompliance is that on the sidewall containing the DOT Tire Identification Number (TIN,) the marking describing the generic material content of the casing plies for tread and sidewall, required by paragraph S6.5(f) of FMVSS No. 119, is incorrect.

For the subject tires, the marking reads:

| Tread plies | Sidewall plies |
|---|---|
| 2 polyamide<br>1 aramid | 2 polyamide<br>..... |

The correct marking for these tires is:

| Tread plies | Sidewall plies |
|---|---|
| 2 polyester<br>1 aramid | 2 polyester<br>..... |

*V. Rule Text:* Paragraph S6.5(f) of FMVSS No. 119 requires in pertinent part:

S6.5 Tire markings. Except as specified in this paragraph, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of this section. . . . Markings may appear on only one sidewall and the entire sidewall area may be used in the case of motorcycle tires and recreational, boat, baggage, and special trailer tires. . . .

(f) The actual number of plies and the composition of the ply cord material in the sidewall and, if different, in the tread area; . . .

*V. Summary of MNA's Analyses:* MNA stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) The subject tires meet or exceed all of the minimum performance requirements of FMVSS No. 119 for motorcycle tires, and carry on their sidewalls all the other required markings of FMVSS No. 119. The content of these tires is as designed; it is only the marking of the generic material for the casing plies which is inconsistent with the content. Since the

generic material marking does not influence the purchase nor the fitment of tires to vehicles, the above described noncompliance is viewed by MNA to have no impact on the performance of the tire, nor the associated motor vehicle safety.

(B) The subject tires contain the necessary tire material labeling information on at least one sidewall. The number of reinforcing plies in the tread, and in the sidewall, are correct. It is the descriptor for the generic material which is not consistent with the actual content of the tire—''Polyamide'' in place of ''Polyester.'' Since this marking is only on one sidewall and there is no other marking to compare it to, consumers will not be confused by the content of the marking, nor do they make purchasing decisions based upon this mark. Only a specialist, familiar with the differences between ''Polyamide'' and ''Polyester'', with access to the internal content of the tire, would recognize this discrepancy.

(C) This marking discrepancy has no impact on a consumer's, dealer's, or distributor's ability, nor our ability, to identify product in the event of a market action. During market actions, the tire dimension, brand name, load capacity, and TIN are used to identify tires which are to be removed from the market. The tire's generic material content marking would therefore not have an impact on a consumer's or dealer's ability to implement a market action.

(D) MNA stated its belief that NHTSA has granted previous petitions for inconsequential noncompliance involving noncompliant ply-cord generic material content labeling. For example, the term ''Polyester'' was substituted for ''Nylon'' in a tread ply labeling noncompliance for which a petition was filled by Goodyear Tire and Rubber Company (Goodyear). In that case, NHTSA agreed with Goodyear that the non-compliance was inconsequential to motor vehicle safety. See 77 FR 2775.

MNA has additionally informed NHTSA that it has corrected the noncompliance so that all future production motorcycle tires will comply with FMVSS No. 119.

In summation, MNA believes that the described noncompliance of the subject motorcycle tires is inconsequential to motor vehicle safety, and that its petition, to exempt MNA from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

**NHTSA Decision**

*NHTSA Analysis:* The agency agrees with MNA that the noncompliance is inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliances on the operational safety of vehicles on which these tires are mounted. Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires.

In the agency's judgment, the incorrect labeling of the tire construction information in this instance will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the ply material in a tire.

*NHTSA Decision:* In consideration of the foregoing, NHTSA has decided that MNA has met its burden of persuasion that the FMVSS No. 119 noncompliance is inconsequential to motor vehicle safety. Accordingly, MNA's petition is hereby granted and MNA is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject noncompliant tires that MNA no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after MNA notified them that the subject noncompliance existed.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

**Jeffrey M. Giuseppe,**

*Acting Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2014–30241 Filed 12–29–14; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2014–0083; Notice 2]**

### China Manufacturers Alliance, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition.

**SUMMARY:** China Manufacturers Alliance, LLC (CMA) and Double Coin Holdings, Ltd (DCHL) have determined that certain Double Coin and Dynatrac brand truck & bus radial replacement tires that were imported by CMA and manufactured by DCHL do not fully comply with paragraph S6.5 of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds) and Motorcycles*. CMA and DCHL filed an appropriate report dated June 17, 2014, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

**ADDRESSES:** For further information on this decision contact Abraham Diaz, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5310, facsimile (202) 366–5930.

**SUPPLEMENTARY INFORMATION:**

*I. CMA and DCHL's Petition:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, CMA and DCHL submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of CMA and DCHL's petition was published, with a 30-Day public comment period, on September 15, 2014 in the **Federal Register** (79 FR 55068). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/*. Then

follow the online search instructions to locate docket number ''NHTSA–2014–0083.''

*II. Replacement Tires Involved:* Affected are approximately 1,753,089 Double Coin and Dynatrac brand truck & bus radial (TBR) replacement tires that were imported by CMA and manufactured by DCHL tires from June 2011 to June 2014 (DOT date codes 2711 to 2614). Refer to CMA and DCHL's 49 CFR part 573 report for descriptions of the tire sizes and other specifics.

*III. Noncompliance:* CMA and DCHL describe the noncompliance as the inadvertent omission of the letter marking that designates the tire Load Range from the tire sidewall.

*IV. Rule Text:* Paragraph S6.5 of FMVSS No. 119 requires in pertinent part:

S6.5 Tire markings. Except as specified in this paragraph, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of this section. The markings shall be placed between the maximum section width (exclusive of sidewall decorations or curb ribs) and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area which is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, the markings shall appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings shall be in letters and numerals not less than 2 mm (0.078 inch) high and raised above or sunk below the tire surface not less that 0.4 mm (0.015 inch), except that the marking depth shall be not less than 0.25 mm (0.010 inch) in the case of motorcycle tires. The tire identification and the DOT symbol labeling shall comply with part 574 of this chapter. Markings may appear on only one sidewall and the entire sidewall area may be used in the case of motorcycle tires and recreational, boat, baggage, and special trailer tires. . . .

(j) The letter designating the tire load range.

*V. Summary of CMA and DCHL's Analyses:* CMA and DCHL stated their belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. CMA has certified that the subject tires are fully compliant to all requirements of FMVSS No. 119 except for the aforementioned omission issue. The tires are manufactured to the specifications and are able to carry the specified weight designed for these tires and as mandated by FMVSS No. 119.

2. CMA stated that NHTSA tested two samples from the tires in question for endurance and found them to comply with the required standards of FMVSS No. 119, and that in addition to the S6.5 required markings, CMA also includes redundant safety markings on some of the most critical criterion of a TBR tire. With FMVSS No. 119 requiring items S6.5 (a–j) as mandatory, CMA also lists data that assists dealers/consumers in recognizing the tire's abilities and performance. Included on the sidewall of these tires, but not mandatory requirements by FMVSS No. 119, are Load Index for both single and dual placement of the tire, Ply Rating and Speed Rating.

3. CMA believes that Load Index is a redundant data point for Load Range. Both measure the important max load/max pressure data required on the tire sidewall. In addition, the Tire and Rim Association (TRA) data book lists a conversion chart as to Load Range and Ply Rating correlation. Thus, the information that the Load Range letter is meant to convey is already included on the tire in two other ways, *i.e.* Load Index and Ply Rating.

4. CMA has certified that the subject tires have been properly manufactured to the requirements of FMVSS No. 119 including all static and dynamic requirements and design requirements for max load requirements as well as additional information for consumers to review that correlate to load range so the noncompliance is one of format of the markings.

5. CMA believes that there is little to no risk of overloading by an end-user because of the inclusion of the Load Index and Ply Ratings. Even in the absence of the Load Range, an end-user would have to ignore the max load/max pressure data on the tire and the ply rating in order to create a risk as to motor vehicle safety.

6. CMA also believes that because the tires in question meet the performance standards of FMVSS No. 119, and the information conveyed by the Load Range is imparted to end-users by both the required Load Index and the optional Ply Rating, the absence of the Load Range on these tires is inconsequential as to motor vehicle safety.

CMA and DCHL has additionally informed NHTSA that it has corrected the noncompliance so that all future production replacement tires will comply with FMVSS No. 119.

In summation, CMA and DCHL believe that the described noncompliance of the subject replacement tires is inconsequential to motor vehicle safety, and that its petition, to exempt CMA and DCHL's from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

**NHTSA Decision**

*NHTSA Analysis:* The purpose for the Load Range labeling letter required by paragraph S6.5(j) of FMVSS No. 119 is to provide information to assist the tire purchaser about the load carrying capabilities of the tire. In the case of the subject tires, CMA and DCHL stated that the information the Load Range letter is meant to convey is also labeled on the subject tires in two other ways: (1) The Load Index, which is a numerical code correlating to the maximum load carrying capacity of the tire and (2) the Ply Rating (an additional means vehicle manufacturers use to properly select tires for a particular application (abbreviated on the tires as ''PR'')).

NHTSA agrees that the noncompliance is inconsequential to motor vehicle safety in this case because the information intended to be conveyed by the missing Load Range letter is communicated by other means on the tires, specifically:

1. The Ply Rating stamped on the sidewall of the subject tires correctly correlates to the Load Range designation/Ply Rating Equivalency table listed by The Tire and Rim Association Inc. (TRA) 2013 book. Furthermore, the Load Range listed in the table is also correctly associated to the Tire Size of the subject tires.

2. The service index or Load Index stamped on the sidewall of the subject tires, which provides another means for a customer to properly select a tire for a particular application, also correctly correlates to the Load Index listed by The Tire and Rim Association Inc. (TRA) 2013 book for the subject tires.

3. The maximum load and maximum pressure stamped on the sidewall of the subject tires correctly correlates to the maximum loads and pressures listed by The Tire and Rim Association Inc. (TRA) 2013 book.

Finally, the tires are designed to meet all other applicable requirements of FMVSS No. 119.

*NHTSA Decision:* In consideration of the foregoing, NHTSA has decided that CMA and DCHL have met their burden of persuasion that the FMVSS No. 119 noncompliance is inconsequential to motor vehicle safety. Accordingly, CMA and DCHL's petition is hereby granted and CMA and DCHL are exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to

exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that CMA and DCHL no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve CMA and DCHL distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after CMA and DCHL notified them that the subject noncompliance existed.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

**Jeffrey M. Giuseppe,**

*Acting Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2014–30486 Filed 12–29–14; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2012–0147; Notice 2]**

### American Honda Motor Co., Inc., Grant of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Grant of petition.

**SUMMARY:** American Honda Motor Co., Inc. (Honda) has determined that the tire pressure monitoring system (TPMS) low tire pressure warning for certain model year (MY) 2011 and 2012 Acura TSX passenger cars equipped with accessory 18-inch diameter wheels sold at Honda dealerships do not comply with paragraph S4.2(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 138 *Tire Pressure Monitoring Systems*. Honda has filed an appropriate report dated September 27, 2012, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

**ADDRESSES:** For further information on this decision contact Maurice Hicks, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–1708, facsimile (202) 366–5930.

**SUPPLEMENTARY INFORMATION:**

*I. Honda's Petition:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Honda submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of Honda's petition was published, with a 30-day public comment period, on July 22, 2013, in the **Federal Register** (78 FR 43965.) No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/*. Then follow the online search instructions to locate docket number ''NHTSA–2012–0147.''

*II. Vehicles Involved:* Affected are approximately 212 model years 2011 and 2012 Acura TSX passenger cars equipped with accessory 18-inch diameter wheels sold at Honda dealerships.

*III. Noncompliance:* Honda explains that the noncompliance is that when the accessory wheels and tires are installed on the subject vehicles, the preset TPMS warning level cannot be adjusted to warn at a higher cold inflation pressure for the accessory tires. The TPMS system on these vehicles is set for the OEM 17-inch diameter tires with recommended 230 kPa (33 psi), not the accessory 18-inch tires with recommended 260 kPa (38 psi).

Honda set the TPMS warning level for the OEM tires at 183 kPa (26.5 psi), which is approximately 20 percent below the recommended inflation pressure. Standard 138 requires a warning when the pressure is equal to or less than 25 percent below the recommended inflation pressure. For the accessory tires, 25 percent below 260 kPa (38 psi) is 195 kPa (28.3 psi), but the telltale does not illuminate until the tire pressure reaches 183 kPa (26.5 psi). Therefore, the vehicles do not comply with paragraph S4.2(a) of FMVSS No. 138.

*IV. Rule Text:* Paragraph S4.2(a) of FMVSS No. 138 requires in pertinent part:

S4.2 *TPMS detection requirements.* The tire pressure monitoring system must:

(a) Illuminate a low tire pressure warning telltale not more than 20 minutes after the inflation pressure in one or more of the vehicle's tires, up to a total of four tires, is equal to or less than either the pressure 25 percent below the vehicle manufacturer's recommended cold inflation pressure, or the pressure specified in the 3rd column of Table 1 of this standard for the corresponding type of tire, whichever is higher;

*V. Summary of Honda's Analyses:* A total of approximately 848 wheels, or 212 complete wheel sets, were sold to Acura dealerships by Honda between November 2010 and April 2012. These wheels were sold with a replacement tire pressure placard, in accordance with the requirements of FMVSS No. 110 ''Tire Selection and Rims'', indicating an inflation pressure of 260 kPa (38 psi) for the recommended 225/45ZR 18 tire size with an 95Y load capacity rating. There have been no reports of crashes, injuries or death as a result of the accessory tire being used with the standard TPMS threshold.

After the beginning of retail sales of 2012 model year Acura TSX models Honda discovered that the recommended electronic method of updating the TPMS setting for these accessory wheels would incorrectly inform technicians that the adjustments had been completed successfully. The result is that the TPMS warning threshold remains at Honda's setting for the OEM 17-inch diameter wheels of not less than 183kPa (26.5psi) for the standard recommended tire pressure of 230kPa (33psi). The minimum allowable TPMS threshold for the 18-inch diameter accessory wheels would be 195kPA (28 psi) (28.3psi using conversion factor 1psi = 6.895kPa), based on the recommended pressure of 260kPa (38psi) as indicated on the tire pressure placard.

Honda believes that this noncompliance is inconsequential to motor vehicle safety because even at the lower TPMS threshold, adequate load capacity remains for the tires on these vehicles. Honda indicated that it also conducted dynamic testing to confirm that the handling and stability of the vehicle is not adversely affected at the lower pressures.

The maximum load capacity for each of the P225/45ZR 18 95Y tires for this vehicle is 575 kilograms (1,268lbs) at 230kPa (33psi), calculated using the Japan Automotive Tyre Manufacturer's Association (JATMA) method, as recognized by NHTSA in FMVSS No. 110. The maximum allowable load according to the Gross Axle Weight Ratings (GAWR) for a 2011 or 2012 Acura TSX is 546.6 kilograms (1,207.2 lbs) for each front tire and 514.9 kilograms (1,135 lbs) for each rear tire, well within the load capacity specified by JATMA.

At 80% of the lower pressure for the OEM 17-inch tires (230kPa (33psi), as opposed to the 260kPa (38psi) recommended on the tire pressure placard for the 18-inch accessory tires), the low tire pressure indicator will illuminate at 183kPa (26.5psi).

Honda has additionally informed NHTSA that it has corrected the noncompliance so that all future vehicles will comply with FMVSS No. 138.

In summation, Honda believes that the described noncompliance of its vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

**I. NHTSA's Analysis and Decision**

Honda is petitioning NHTSA for exemption on the basis that the noncompliance is inconsequential to safety because the accessory wheels and tires have adequate load carrying capacity at the lower tire pressure of the 17-inch OEM tires and because the handling and stability of the vehicle is not adversely affected at this lower pressure as confirmed by Honda's own dynamic testing. Honda used similar arguments that were accepted by NHTSA in granting the Part 556 exemption for the TPMS noncompliance involving certain 2008 and 2009 Honda Civics (see 77 FR 43145 on July 23, 2012).

NHTSA agrees with Honda that the accessory tires inflated to 230 kPa (33 psi) that is the lower pressure for the OEM 17-inch tires will have adequate load carrying capacity to accommodate the maximum weight of the subject vehicles. Similar to the agency's previous conclusion in responding to the Honda Civic petition and as required by FMVSS No. 110, the tire's load ratings must be equal to or exceed the load applied when the vehicle is at its maximum loaded weight. FMVSS No. 110, section S4.2.1.1, states that, ''The vehicle maximum load on the tire shall not be greater than the applicable maximum load rating as marked on the sidewall of the tire.'' According to Honda, for a 2011 or 2012 Acura TSX, each front tire would be required to support a maximum load of 546.6 kilograms (1,207.2 lbs) to accommodate the GAWR of the front axle. Likewise, for each rear tire, a load rating of 514.9 kilograms (1,135 lbs) or more would be needed to support the GAWR of the rear axle.

Data from the Japan Automotive Tyre Manufacturers' Association, a reference recognized in FMVSS No. 110, indicate that for each P225/45ZR 18 95Y accessory tire, the load rating is calculated to be 575 kilograms (1,268lbs) at the lower pressure of the original tires, 230 kPa (33psi). This load rating is greater than the highest (front) tire load on the affected vehicle based on the GAWR. Furthermore, the manufacturer of the optional tires would have to meet FMVSS No. 139 which specifies a low inflation pressure performance test in which the tires are loaded to the maximum tire load carrying capacity while underinflated to a pressure of only 140kPa (20 psi), which is less than the TPMS telltale activation pressure for the OEM tires of the subject vehicles. Therefore, adequate load carrying capacity remains for the accessory tires on these vehicles.

Honda's second argument is that the handling and stability of the subject vehicles are not adversely affected by the accessory tires and wheels. While NHTSA cannot confirm Honda's in-house results, we believe it is the responsibility of each vehicle manufacturer to maintain certification to all applicable FMVSSs for all optional equipment such as any wheels and tires it authorizes. Honda provided the 212 complete wheel sets to dealers with replacement vehicle tire placards as required by FMVSS No. 110, specifying the correct tire size and inflation pressure. It follows that Honda believed a vehicle so equipped would continue to comply with NHTSA's safety standards. For example, the subject vehicles with the accessory wheel sets should continue to comply with the requirements of FMVSS No. 126, *Electronic stability control systems*.

In consideration of the foregoing, NHTSA has decided that Honda has met its burden of persuasion that the FMVSS No. 138 noncompliance is inconsequential to motor vehicle safety. Accordingly, Honda's petition is hereby granted and Honda is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only apply to the subject 212 subject vehicles that Honda no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Honda notified them that the subject noncompliance existed.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

**Jeffrey M. Giuseppe,**

*Acting Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2014–30487 Filed 12–29–14; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

December 23, 2014.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before January 29, 2015 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov.*

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0928.

*Type of Review:* Extension of a currently approved collection.

*Title:* TD 9099—Disclosure of Relative Values of Optional Forms of Benefit.

*Abstract:* This document contains final regulations that consolidate the content requirements applicable to explanations of qualified joint and survivor annuities and qualified preretirement survivor annuities payable under certain retirement plans, and specify requirements for disclosing the relative value of optional forms of benefit that are payable from certain retirement plans in lieu of a qualified

joint and survivor annuity. These regulations affect plan sponsors and administrators, and participants in and beneficiaries of, certain retirement plans.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Annual Burden Hours:* 385,000.

*OMB Number:* 1545–1920.

*Type of Review:* Revision of a currently approved collection.

*Title:* Repayment of a Federal Government Buyout and Possible Suspension of Severance Pay.

*Form:* 12311.

*Abstract:* Form 12311 outlines the regulations requiring those employees being rehired by the government and received a buyout from their previous job to make repayment of the buyout before they will be hired again.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden Hours:* 530.

*OMB Number:* 1545–1772.

*Type of Review:* Revision of a currently approved collection.

*Title:* User Fee for Employee Plan Determination Letter Request.

*Form:* 8717.

*Abstract:* The Omnibus Reconciliation Act of 1990 requires payment of a ''user fee'' with each application for a determination letter. Because of this requirement, the Form 8717 was created to provide filers the means to make payment and indicate the type of request.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Annual Burden Hours:* 445,770.

*OMB Number:* 1545–0014.

*Type of Review:* Extension of a currently approved collection.

*Title:* Application for Registration for Certain Excise Tax Activities.

*Form:* 637.

*Abstract:* Form 637 is used to apply for excise tax registration. The registration applies to a person required to be registered under IRC section 4101 for purposes of the federal excise tax on taxable fuel imposed by IRC 4041 and 4081; and to certain manufacturers or sellers and purchasers that must register under IRC 4222 to be exempt from the excise tax on taxable articles. The data is used to determine if the applicant qualifies for exemption. Taxable fuel producers are required by IRC 4101 to register with the Service before incurring any tax liability.

*Affected Public:* Private Sector: Businesses and other for-profits.

*Estimated Annual Burden Hours:* 27,020.

*OMB Number:* 1545–1939.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Notice 2005–32—Notification Requirement for Transfer of Partnership Interest in Electing Investment Partnership (EIP).

*Abstract:* The American Jobs Creation Act of 2004, Pub. L. 108–357, 118 Stat. 1418 (the Act), was enacted on October 22, 2004. The Treasury Department and the Internal Revenue Service intend to issue regulations implementing sections 833 and 834 of the Act, which amended sections 704, 734, 743, and 6031 of the Internal Revenue Code. This notice provides interim procedures for partnerships and their partners to comply with the mandatory basis provisions of sections 734 and 743, as amended by the Act. This notice also provides interim procedures for electing investment partnerships (EIPs) and their partners to comply with sections 743(e) and 6031(f), as provided in section 833(b) of the Act.

*Affected Public:* Private Sector: Businesses and other for-profits.

*Estimated Annual Burden Hours:* 552,100.

*OMB Number:* 1545–0967.

*Type of Review:* Revision of a currently approved collection.

*Title:* Declaration and Signature for Electronic and Magnetic Media Filing.

*Form:* 8879–F.

*Abstract:* The Form 8879–F is used to secure taxpayer signatures and declarations in conjunction with electronic and magnetic media filing of trust and fiduciary income tax returns and, if applicable, consent to electronic funds withdrawal. The form together with the electronic and magnetic media transmission will comprise the taxpayer's income tax return.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Annual Burden Hours:* 2,164,379.

*OMB Number:* 1545–1150.

*Type of Review:* Revision of a currently approved collection.

*Title:* Form 990–EZ—Short Form Return of Organization Exempt From Income Tax.

*Form:* 990–EZ and schedules.

*Abstract:* Form 990–EZ and schedules are needed to determine that IRS section 501(a) tax- exempt organizations fulfill the operating conditions within the limitations of their tax exemption. IRS uses the information from this form to determine if the filers are operating within the rules of their exemption.

*Affected Public:* Private Sector: Not-for-profit institutions.

*Estimated Annual Burden Hours:* 52,028,163.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2014–30466 Filed 12–29–14; 8:45 am]

**BILLING CODE 4810–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

December 22, 2014.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before January 29, 2015 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov.*

### Internal Revenue Service

*OMB Number:* 1545–0001.

*Type of Review:* Extension of a currently cleared collection.

*Title:* Employer's Annual Railroad Retirement Tax Return.

*Form:* CT–1, CT–1X.

*Abstract:* Railroad employers are required to file an annual return to report employer and employee Railroad Retirement Tax Act (RRTA). Form CT–1 is used for this purpose. IRS uses the information to insure that the employer has paid the correct tax.

*Affected Public:* Private sector: Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 39,455.

*OMB Number:* 1545–0096.

*Type of Review:* Extension of a currently cleared collection.

*Title:* Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons; Form 1042–S, Foreign Person's U.S. Source Income Subject to Withholding, Form 1042–T, Annual Summary and Transmittal of Form 1042–S.

*Forms:* 1042, 1042–S, 1042–T.

*Abstract:* Form 1042 is used by withholding agents to report tax withheld at source on certain income paid to nonresident alien individuals, foreign partnerships, and foreign corporations to the IRS. Form 1042–S is used by withholding agents to report income and tax withheld to payees. A copy of each 1042–S is filed magnetically or with Form 1042 for information reporting purposes. The IRS uses this information to verify that the correct amount of tax has been withheld and paid to the United States. Form 1042–T is used by withholding agents to transmit Forms 1042–S to the IRS.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 2,705,594.

*OMB Number:* 1545–0110.

*Type of Review:* Revision of a currently approved collection.

*Title:* Form 1099–DIV—Dividends and Distributions.

*Form:* 1099–DIV.

*Abstract:* The Form 1099–DIV is used by the Service to insure that dividends are properly reported as required by Code section 6042 and that liquidation distributions are correctly reported as required by Code section 6043, and to determine whether payees are correctly reporting their income.

*Affected Public:* Private sector: Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 34,115,874.

*OMB Number:* 1545–0152.

*Type of Review:* Extension of a currently approved collection.

*Title:* Application for Change in Accounting Method.

*Form:* 3115.

*Abstract:* Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 929,066.

*OMB Number:* 1545–0238.

*Type of Review:* Revision of a currently approved collection.

*Title:* Form W–2G—Certain Gambling Winnings.

*Form:* W–2G.

*Abstract:* Section 6041 of the Internal Revenue Code requires payers of certain gambling winnings to report them to IRS. If applicable, section 3402(g) and section 3406 require tax withholding on these winnings. We use the information to ensure taxpayers' reporting compliance.

*Affected Public:* Individuals.

*Estimated Total Burden Hours:* 4,304,877.

*OMB Number:* 1545–0284.

*Type of Review:* Extension of a currently approved collection.

*Title:* Application for Determination of Employee Stock Ownership Plan.

*Form:* 5309.

*Abstract:* Form 5309 is used in conjunction with Form 5300 when applying for a determination letter as to a deferred compensation plan's qualification status under section 409 or 4975(e)(7) of the Internal Revenue Code. The information is used to determine whether the plan qualifies.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 26,975.

*OMB Number:* 1545–0723.

*Type of Review:* Extension of a currently approved collection.

*Title:* T.D. 8043—Manufacturers Excise Taxes and Sporting Goods and Firearms and Other Administrative Provisions of Special Application to Manufacturers and Retailers Excise Taxes.

*Abstract:* This document contains final regulations which revise and update the regulations on manufacturers excise taxes on sporting goods and firearms and other administrative provisions especially applicable to manufacturers and retailers excise taxes. The IRS requires information relating to the sale and use of specified articles be retained by persons claiming credits and refunds of tax. In addition, information must be reported to claimants by purchasers of those articles, and claimants must file claims with the IRS and supply supporting information with the claims. The information is necessary to verify that claims submitted are correct and that the claimants are entitled to receive a credit or refund of tax from the IRS.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 475,000.

*OMB Number:* 1545–0795.

*Type of Review:* Revision of a currently approved collection.

*Title:* Form 8233—Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual.

*Form:* 8233.

*Abstract:* Compensation paid to a nonresident alien (NRA) individual for independent personal services (self-employment) is generally subject to 30% withholding or graduated rates. However, compensation may be exempt from withholding because of a U.S. tax treaty or personal exemption amount. Form 8233 is used to request exemption from withholding.

*Affected Public:* Individuals.

*Estimated Total Burden Hours:* 684,334.

*OMB Number:* 1545–0863.

*Type of Review:* Extension of a currently approved collection.

*Title:* LR–218–78 (Final) Product Liability Losses and Accumulations for Product Liability Losses.

*Abstract:* Generally, a taxpayer who sustains a product liability loss must carry the loss back 10 years. However, a taxpayer may elect to have such loss treated as a regular net operating loss under section 172. If desired, such election is made by attaching a statement to the tax return. This statement will enable the IRS to monitor compliance with the statutory requirements.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 2,500.

*OMB Number:* 1545–0922.

*Type of Review:* Extension of a currently approved collection.

*Title:* Form 8329, Lender's Information Return for Mortgage Credit Certificates (MCCs); Form 8330, Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs).

*Form:* 8329, 8330.

*Abstract:* Form 8329 is used by lending institutions and Form 8330 is used by state and local governments to report on mortgage credit certificates (MCCs) authorized under IRC Section 25. IRS matches the information supplied by lenders and issuers to ensure that the credit is computed properly.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 73,720.

*OMB Number:* 1545–1100.

*Type of Review:* Extension of a currently approved collection.

*Title:* REG–209106–89 (NPRM) Changes With Respect to Prizes and Awards and Employee Achievement Awards.

*Abstract:* This regulation requires recipients of prizes and awards to maintain records to determine whether a qualifying designation has been made. The affected public are prize and award recipients who seek to exclude the cost of a qualifying prize or award.

*Affected Public:* Individuals.

*Estimated Total Burden Hours:* 1,275.

*OMB Number:* 1545–1139.

*Type of Review:* Extension of a currently approved collection.

*Title:* Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders (TD 9300); TD 9428—Section 1367 Regarding Open Account Debt (TD 9428).

*Abstract:* The regulations provide the procedures and the statements to be filed by S corporations for making the election provided under section 1368, and by shareholders who choose to reorder items that decrease their basis. Statements required to be filled will be used to verify that taxpayers are complying with the requirements imposed by Congress.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 450.

*OMB Number:* 1545–1218.

*Type of Review:* Extension of a currently approved collection.

*Title:* CO–25–96 (TD 8824—Final) Regulations Under Section 1502 of the Internal Revenue Code of 1986; Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits Following.

*Abstract:* Section 1502 provides for the promulgation of regulations with respect to corporations that file consolidated income tax returns. Section 382 limits the amount of income that can be offset by loss carryovers and credits after an ownership change. These final regulations provide rules for applying section 382 to groups of corporations that file a consolidated return.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 662.

*OMB Number:* 1545–1275.

*Type of Review:* Extension of a currently approved collection.

*Title:* Limitations on net operating loss carryforwards and certain built-in losses following ownership change.

*Abstract:* 26 U.S.C. 382 limits the amount of the taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses, for each such year. 26 CFR 1.382–9(d)(2)(iii) and (d)(4)(iv) allow a loss corporation to rely on a statement by beneficial owners of indebtedness in determining whether the loss corporation qualifies under section 382(l)(1)(5). Section 1.382–9(d)(6)(ii) requires a loss corporation to file an election if it wants to apply the regulations retroactively, or revoke a prior section 382(l)(1)(6) election.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 200.

*OMB Number:* 1545–1385.

*Type of Review:* Revision of a currently approved collection.

*Title:* TD 8549 (Final) Preparer Penalties—Manual Signature Requirement.

*Abstract:* The reporting requirements affect returns preparers of fiduciary returns. They will be required to submit a list of the names and identifying numbers of all fiduciary returns which are being filed with a facsimile signature of the returns preparer.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 24,000.

*OMB Number:* 1545–1393.

*Type of Review:* Extension of a currently approved collection.

*Title:* EE–14–81 Deductions and Reductions in Earnings and Profits (or Accumulated Profits) With Respect to Certain Foreign Deferred Compensation Plans Maintained by Certain Foreign Corporations.

*Abstract:* The regulation provides guidance regarding the limitations on deductions and adjustments to earnings and profits (or accumulated profits) for certain foreign deferred compensation plans. Respondents will be multinational corporations.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 634,450.

*OMB Number:* 1545–1484.

*Type of Review:* Extension of a currently approved collection.

*Title:* TD 8881 (Final) REG–242282–97 (formerly Intl–62–90, Intl–32–93, Intl–52–86, and Intl–52–94) General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign.

*Abstract:* This document contains regulations relating to the withholding of income tax under sections 1441, 1442, and 1443 on certain U.S. source income paid to foreign persons and related requirements governing collection, deposit, refunds, and credits of withheld amounts under sections 1461 through 1463. These regulations affect persons making payments of U.S. source income to foreign persons.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 1.

*OMB Number:* 1545–1488.

*Type of Review:* Extension of a currently approved collection.

*Title:* Requirements Respecting the Adoption or Change of Accounting Method, Extensions of Time to Make Elections. TD 8742—(final).

*Abstract:* This document contains final regulations providing the procedures for requesting an extension of time to make certain elections under the Internal Revenue Code. In addition, the regulations provide the standards that the Commissioner will use in determining whether to grant taxpayers extensions of time to make certain elections including changes in accounting method and accounting period.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 5,000.

*OMB Number:* 1545–1519.

*Type of Review:* Revision of a currently approved collection.

*Title:* Form 1099 LTC—Long-Term Care and Accelerated Death Benefits.

*Form:* 1099–LTC.

*Abstract:* Under the terms of IRC sections 7702B and 101g, qualified long-term care and accelerated death benefits paid to chronically ill individuals are treated as amounts received for expenses incurred for medical care. Amounts received on a per diem basis in excess of $175 per day are taxable. Section 6050Q requires all such amounts to be reported.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 67,275.

*OMB Number:* 1545–1633.

*Type of Review:* Extension of a currently approved collection.

*Title:* T.D. 8802—Certain Asset Transfers to a Tax-Exempt Entity.

*Abstract:* This document contains final regulations that implement provisions of the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The final regulations generally affect a taxable corporation that transfers all or substantially all of its assets to a tax-exempt entity or converts from a taxable corporation to a tax-exempt entity in a transaction other than a liquidation, and generally require the taxable corporation to recognize gain or loss as if it had sold the assets transferred at fair market value.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 125.

*OMB Number:* 1545–1643.
*Type of Review:* Extension of a currently approved collection.
*Title:* REG–209484–87 (TD 8814 final) Federal Insurance Contributions Act (FICA) Taxation of Amounts Under Employee Benefit Plans.
*Abstract:* This regulation provides guidance as to when amounts deferred under or paid from a nonqualified deferred compensation plan are taken into account as wages for purposes of the employment taxes imposed by the Federal Insurance Contributions Act (FICA). Section 31.3121(v)(2)–1(a)(2) requires that the material terms of a plan be set forth in writing.
*Affected Public:* Private sector: Business or other for-profits.
*Estimated Total Burden Hours:* 12,500.

*OMB Number:* 1545–1646.
*Type of Review:* Extension of a currently approved collection.
*Title:* Return Requirement for United States Persons who acquire or dispose of an interest in a foreign partnership, or whose proportional interest in a foreign partnership changes.
*Abstract:* This document contains final regulations under section 6046A of the Internal Revenue Code relating to the requirement that United States persons, in certain circumstances, file a return if they acquire or dispose of an interest in a foreign partnership, or if their proportional interest in a foreign partnership changes. The burden of complying with the collection of information required to be reported on Form 8865 is reflected in the burden for Form 8865, ''Return of U.S. Persons With Respect to Certain Foreign Partnerships.''
*Affected Public:* Private sector: Business or other for-profits.
*Estimated Total Burden Hours:* 1.

*OMB Number:* 1545–1654.
*Type of Review:* Extension of a currently approved collection.
*Title:* T.D. 8902, Capital Gains, Partnership and Subchapter S, and Trust Provisions.
*Abstract:* This document contains final regulations relating to sales or exchanges of interests in partnerships, S corporations, and trusts. The regulations interpret the look-through provisions of section 1(h), added by section 311 of the Taxpayer Relief Act of 1997 and amended by sections 5001 and 6005(d) of the Internal Revenue Service Restructuring and Reform Act of 1998, and explain the rules relating to the division of the holding period of a partnership interest. The regulations affect partnerships, partners, S corporations, S corporation shareholders, trusts, and trust beneficiaries.
*Affected Public:* Private sector: Business or other for-profits.
*Estimated Total Burden Hours:* 1.

*OMB Number:* 1545–1655.
*Type of Review:* Extension of a currently approved collection.
*Title:* T.D. 8861, Private Foundation Disclosure Rules.
*Form:* 3115.
*Abstract:* This document contains final regulations that amend the regulations relating to the public disclosure requirements described in section 6104(d) of the Internal Revenue Code. These final regulations implement changes made by the Tax and Trade Relief Extension Act of 1998, which extended to private foundations the same rules regarding public disclosure of annual information returns that apply to other tax-exempt organizations. These final regulations provide guidance for private foundations required to make copies of applications for recognition of exemption and annual information returns available for public inspection and to comply with requests for copies of those documents.
*Affected Public:* Private sector: Not-for-profit organizations.
*Estimated Total Burden Hours:* 32,596.

*OMB Number:* 1545–1658.
*Type of Review:* Extension of a currently approved collection.
*Title:* T.D. 8940, Purchase Price Allocations in Deemed Actual Asset Acquisitions.
*Abstract:* This document contains final regulations relating to deemed and actual asset acquisitions under sections 338 and 1060. The final regulations affect sellers and buyers of corporate stock that are eligible to elect to treat the transaction as a deemed asset acquisition. The final regulations also affect sellers and buyers of assets that constitute a trade or business.
*Affected Public:* Private sector: Business or other for-profits.
*Estimated Total Burden Hours:* 25.

*OMB Number:* 1545–1686.
*Type of Review:* Extension of a currently approved collection.
*Title:* TD 9352—Material Advisors of Reportable Transactions must keep lists of Advisees; Form 13976.
*Form:* 13976.
*Abstract:* TD 9352 contains final regulations under section 6112 of the Internal Revenue Code providing the rules relating to the obligation of material advisors to prepare and maintain lists with respect to reportable transactions under section 6112 of the Internal Revenue Code. Under Section 301.6112–1(b), the form provides material advisors a format for preparing and maintaining the itemized statement component of the list with respect to a reportable transaction. This form contains space for all of the elements required by regulations section 301.6112–1(b)(3). Material advisors may use this form as a template for creating a similar form on a software program used by the material advisor.
*Affected Public:* Private sector: Business or other for-profits.
*Estimated Total Burden Hours:* 50,000.

*OMB Number:* 1545–1763.
*Type of Review:* Extension of a currently approved collection.
*Title:* Form 8302—Electronic Deposit of Tax Refund of $1 Million or more.
*Form:* 8302.
*Abstract:* This form is used to request a electronic deposit of a tax refund of $1 million or more directly into an account at any U.S. bank or other financial institution.
*Affected Public:* Private sector: Business or other for-profits.
*Estimated Total Burden Hours:* 1,729.

*OMB Number:* 1545–1768.
*Type of Review:* Extension of a currently approved collection.
*Title:* Revenue Procedure 2003–84, Optional Election to Make Monthly Sec. 706 Allocations.
*Abstract:* This revenue procedure allows certain partnerships with money market fund partners to make an optional election to close the partnership's books on a monthly basis with respect to the money market fund partners.
*Affected Public:* Private sector: Business or other for-profits.
*Estimated Total Burden Hours:* 500.

*OMB Number:* 1545–1779.
*Type of Review:* Extension of a currently approved collection.
*Title:* Notice 2002–27—IRA Required Minimum Distribution Reporting.
*Abstract:* This notice provides guidance with respect to the reporting requirements, that is, data that custodians and trustees of IRAs must furnish IRA owners in those instances where there must be a minimum distribution from an individual retirement arrangement.
*Affected Public:* Private sector: Business or other for-profits.
*Estimated Total Burden Hours:* 1,170,000.

*OMB Number:* 1545–1784.
*Type of Review:* Extension of a currently approved collection.
*Title:* Rev Proc 2002–32 as Modified by Rev Proc 2006–21, Waiver of 60-month Bar on Reconsolidation after Disaffiliation.

*Abstract:* Revenue Procedure 2002–32 provides qualifying taxpayers with a waiver of the general rule of § 1504(a)(3)(A) of the Internal Revenue Code barring corporations from filing consolidated returns as a member of a group of which it had been a member for 60 months following the year of disaffiliation; Revenue Procedure 2006–21 modifies Rev. Proc. 89–56, 1989–2 C.B. 643, Rev. Proc. 90–39, 1990–2 C.B. 365, and Rev. Proc. 2002–32, 2002–20 IRB p.959, to eliminate impediments to the electronic filing of Federal income tax returns (e-filing) and to reduce the reporting requirements in each of these revenue procedures.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 100.

*OMB Number:* 1545–1786.

*Type of Review:* Extension of a currently approved collection.

*Title:* Rev. Procs. 2002–39, 2006–45 (Previous 2002–37), 2006–46 (Previous 2002–38) and Rev. Proc 2007–64; Changes in Periods of Accounting.

*Abstract:* The collections of information in these three (3) revenue procedures is necessary for the Commissioner to determine whether a taxpayer may properly obtain approval to adopt, change, or retain an annual accounting period.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 700.

*OMB Number:* 1545–1793.

*Type of Review:* Extension of a currently approved collection.

*Title:* Rev. Proc. 2002–43—Determination of Substitute Agent for a Consolidated Group.

*Abstract:* The information is needed in order for (i) a terminating common parent of a consolidated group to notify the IRS that it will terminate and to designate another corporation to be the group's substitute agent, pursuant to Treas. Reg. Sec. 1.1502–77(d)(1) or Sec. 1.1052–77A(d); (ii) the remaining members of a consolidated group to designate a substitute agent pursuant to Sec. 1.1502–77A(d); (iii) the default substitute agent to notify the IRS that it is the default substitute agent pursuant to Sec. 1.1502–77(d)(2); or (iv) requests by a member of the group for the IRS to designate a substitute agent or replace a previously designated substitute agent. The IRS will use the information to determine whether to approve the designation (if approval is required), to designate a substitute agent, or to replace a substitute agent, and to change the IRS's records to reflect the name and other information about the substitute agent.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 400.

*OMB Number:* 1545–1795.

*Type of Review:* Extension of a currently approved collection.

*Title:* T.D. 9079—Ten or More Employer Plan Compliance Information.

*Abstract:* This document contains final regulations that provide rules regarding the requirements for a welfare benefit fund that is part of a 10 or more employer plan. The regulations affect certain employers that provide welfare benefits to employees through a plan to which more than one employer contributes.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 2,500.

*OMB Number:* 1545–1798.

*Type of Review:* Revision of a currently approved collection.

*Title:* User Fee for Exempt Organization Determination Letter Request.

*Form:* 8718.

*Abstract:* Section 7528 of the Code directs the Secretary of the Treasury or delegate (the ''Secretary'') to establish a program requiring the payment of user fees for requests to the Service for letter rulings, opinion letters, determination letters, and similar requests. Form 8718, User Fee for Exempt Organization Determination Letter Request, was created as a result of The Omnibus Reconciliation Act of 1990 which requires payment of a ''user fee'' with each application for a determination letter. Form 8718 provides filers with the means to enclose their user fee payment and indicate what type of request they are making.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 719.

*OMB Number:* 1545–1910.

*Type of Review:* Extension of a currently approved collection.

*Title:* Information Return of U.S. Persons With Respect To Foreign Disregarded Entities (Form 8858); and Transactions Between Foreign Disregarded Entity of a Foreign Tax Owner and the Filer.

*Form:* 8858.

*Abstract:* Form 8858 and Schedule M (Form 8858) are used by certain U.S. persons that own a foreign disregarded entity (FDE) directly or, in certain circumstances, indirectly or constructively.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 1,832,500.

*OMB Number:* 1545–1930.

*Type of Review:* Extension of a currently approved collection.

*Title:* T.D. 9248—Residence and Source Rules Involving U.S. Possessions and Other Conforming Changes (Final and Temporary).

*Abstract:* T.D. 9248 contains final regulations that provide rules for determining bona fide residency in the following U.S. possessions: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands under sections 937(a) and 881(b) of the Internal Revenue Code (Code).

*Affected Public:* Individuals.

*Estimated Total Burden Hours:* 300,000.

*OMB Number:* 1545–1934.

*Type of Review:* Extension of a currently approved collection.

*Title:* TD 9394 (REG–108524–00) (Final)—Section 1446 Regulations; Form 8804–C—Certificate of Partner-Level Items to Reduce Section 1446 Withholding.

*Form:* 8804–C.

*Abstract:* This regulations implements withholding regime on partnerships conducting business in the United States that have foreign partners. Such partners are required to pay withholding tax in installments on each foreign partner's allocable share of the partnership's U.S. Business taxable income. Special rules for publicly traded partnerships such that these partnerships pay withholding tax on distributions to foreign partners.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 18,701.

*OMB Number:* 1545–1946.

*Type of Review:* Extension of a currently approved collection.

*Title:* T.D. 9315 (Final) Dual Consolidated Loss Regulations.

*Abstract:* This document contains final regulations under section 1503(d) of the Internal Revenue Code (Code) regarding dual consolidated losses. Section 1503(d) generally provides that a dual consolidated loss of a dual resident corporation cannot reduce the taxable income of any other member of the affiliated group unless, to the extent provided in regulations, the loss does not offset the income of any foreign corporation. Similar rules apply to losses of separate units of domestic corporations. These final regulations address various dual consolidated loss issues, including exceptions to the general prohibition against using a dual consolidated loss to reduce the taxable income of any other member of the affiliated group.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 2,765.

*OMB Number:* 1545–2099.

*Type of Review:* Extension of a currently approved collection.

*Title:* Excise Tax on Certain Transfers of Qualifying Geothermal or Mineral Interests.

*Form:* 8924.

*Abstract:* Form 8924, Excise Tax on Certain Transfers of Qualifying Geothermal or Mineral Interests, is required by Section 403 of the Tax Relief and Health Care Act of 2006 which imposes an excise tax on certain transfers of qualifying mineral or geothermal interests.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 111.

*OMB Number:* 1545–1364.

*Type of Review:* Extension of a currently approved collection.

*Title:* TD 9568—Section 482 Methods to Determine Taxable Income in Connection with a Cost Sharing Arrangement.

*Abstract:* This document contains final regulations regarding methods to determine taxable income in connection with a cost sharing arrangement under section 482 of the Internal Revenue Code (Code). The final regulations address issues that have arisen in administering the current cost sharing regulations. The final regulations affect domestic and foreign entities that enter into cost sharing arrangements described in the final regulations.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 9,350.

*OMB Number:* 1545–1518.

*Type of Review:* Revision of a currently approved collection.

*Title:* HSA, Archer MSA, or Medicare Advantage MSA Information.

*Form:* 5498–SA 2014, 5498–SA 2015.

*Abstract:* Section 220(h) requires trustees to report to the IRS and medical savings account holders contributions to and the year-end fair market value of any contributions made to a medical savings account (MSA). Congress requires Treasury to report to them the total contributions made to an MSA for the current tax year. Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P.L. 108–173) created new Code section 223. Section 223(h) requires the reporting of contributions to and the year-end fair market value of health savings accounts for tax years beginning after December 31, 2003.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 1,559.

*OMB Number:* 1545–1581.

*Type of Review:* Extension of a currently approved collection.

*Title:* T.D. 8812 Continuation Coverage Requirements Applicable to Group Health Plans.

*Abstract:* The regulations require group health plans to provide notices to individuals who are entitled to elect COBRA (The Consolidated Omnibus Budget Reconciliation Act of 1985) continuation coverage of their election rights. Individuals who wish to obtain the benefits provided under the statute are required to provide plans notices in the cases of divorce from the covered employee, a dependent child's ceasing to be dependent under the terms of the plan, and disability. Most plans will require that elections of COBRA continuation coverage be made in writing. In cases where qualified beneficiaries are short by an insignificant amount in a payment made to the plan, the regulations require the plan to notify the qualified beneficiary if the plan does not wish to treat the tendered payment as full payment. If a health care provider contacts a plan to confirm coverage of a qualified beneficiary, the regulations require that the plan disclose the qualified beneficiary's complete rights to coverage.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 404,640.

*OMB Number:* 1545–1648.

*Type of Review:* Revision of a currently approved collection.

*Title:* Publication 3319—Low-Income Taxpayer Clinic Grant Application Package and Guidelines; Grant Web site.

*Abstract:* Publication 3319 is the grant application and program requirements for our external customers, non-profits, legal aid societies, universities, law schools, and will be used by anyone in the U.S. and territories to apply for a low income taxpayer grant. There is a Web site which collects the information.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 9,000.

*OMB Number:* 1545–1765.

*Type of Review:* Extension of a currently approved collection.

*Title:* T.D. 9171, New Markets Tax Credit.

*Abstract:* The regulations provide guidance for taxpayers claiming the new markets tax credit under section 45D of the Internal Revenue Code. The reporting requirements in the regulations require a qualified community development entity (CDE) to provide written notice to: (1) Any taxpayer who acquires an equity investment in the CDE at its original issue that the equity investment is a qualified equity investment entitling the taxpayer to claim the new markets tax credits; and (2) each holder of a qualified equity investment, including all prior holders of that investment that a recapture event has occurred. CDE's must comply with such reporting requirements to the Secretary as the Secretary may prescribe.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 210.

*OMB Number:* 1545–1776.

*Type of Review:* Extension of a currently approved collection.

*Title:* Form 1041–N—U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.

*Form:* 1041–N.

*Abstract:* An Alaska Native Settlement Trust (ANST) may elect under section 646 to have the special income tax treatment of that section apply to the trust and its beneficiaries. This one-time election is made by filing Form 1041–N. Form 1041–N is used by the ANST to report its income, etc., and to compute and pay any income tax. Form 1041–N is also used for the special information reporting requirements that apply to ANSTs.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 700.

*OMB Number:* 1545–1792.

*Type of Review:* Extension of a currently approved collection.

*Title:* REG–164754–01 (FINAL) Split-Dollar Life Insurance Arrangements.

*Abstract:* The final regulations provide guidance for loans made pursuant to a split-dollar life insurance arrangement. To obtain a particular treatment under the regulations for certain split-dollar loans, the parties to the loan must make a written representation, which must be kept as part of their books and records and a copy filed with their federal income tax returns. In addition, if a split-dollar loan provides for contingent payments, the lender must produce a projected payment schedule for the loan and give the borrower a copy of the schedule. This schedule is used by parties to compute their interest accruals and any imputed transfers for tax purposes.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 32,500.

*OMB Number:* 1545–1919.

*Type of Review:* Extension of a currently approved collection.

*Title:* Prior Government Service Information.

*Form:* 12854.

*Abstract:* This product is used to identify applicants who have had prior government services in order to request the OPF from federal records and to identify possible pay setting issues.

*Affected Public:* Individuals.

*Estimated Total Burden Hours:* 6,203.

*OMB Number:* 1545–2129.

*Type of Review:* Extension of a currently approved collection.

*Title:* REG–103146–08—Information Reporting Requirements Under Code Sec. 6039.

*Form:* 3921, 3922.

*Abstract:* Form 3921 is a copy of the information return filed with the IRS which transferred shares of stock to a recipient through exercise of an incentive stock option under section 422(b). Form 3922 is used to record a transfer of the legal title of a share of stock acquired by the employee where the stock was acquired pursuant to the exercise of an option described in section 423(c). REG–103146–08 reflects the changes to section 6039 of the Internal Revenue Code made by section 403 of the Tax Relief and Health Care Act of 2006.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 25,205.

*OMB Number:* 1545–2183.

*Type of Review:* Extension of a currently approved collection.

*Title:* Transfers by Domestic Corporations That Are Subject to Section 367(a)(5); Distributions by Domestic Corporations That Are Subject to Section 1248(f). (TD 9614 & 9615).

*Abstract:* The income tax regulations under section 367(a) reflect changes by the Technical and Miscellaneous Corrections Act of 1988. Section 367(a)(5) provides that a transfer of assets to a foreign corporation in an exchange described in section 361 is subject to section 367(a)(1), unless certain ownership requirements and other conditions are met.

*Affected Public:* Private sector: Business or other for-profits.

*Estimated Total Burden Hours:* 3,260.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2014–30376 Filed 12–29–14; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Fiscal Service

### Proposed Collection of Information: Annual Letters—Certificates of Authority (A) and Admitted Reinsurer

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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 a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the ''Annual Letters—Certificates of Authority (A) and Admitted Reinsurer''.

**DATES:** Written comments should be received on or before March 2, 2015 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov*.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies should be directed to Melvin Saunders, Program Manager, Surety Bonds, 3700 East West Highway, Room 632F, Hyattsville, MD 20782, (202) 874–5283.

**SUPPLEMENTARY INFORMATION:**

*Title:* Annual Letters—Certificates of Authority (A) and Admitted Reinsurer.

*OMB Number:* 1530–0014 (Previously approved as 1510–0057 as a collection conducted by Department of the Treasury/Financial Management Service.)

Transfer of OMB Control Number: The Bureau of Public Debt (BPD) and the Financial Management Service (FMS) have consolidated to become the Bureau of the Fiscal Service (Fiscal Service). Information collection requests previously held separately by BPD and FMS will now be identified by a 1530 prefix, designating Fiscal Service.

*Abstract:* This letter is used to collect information from companies to assist the Treasury Department in determining acceptability and solvency to write or reinsure Federal surety bonds.

*Current Actions:* Extension of a currently approved collection.

*Type of Review:* Regular.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 341.

*Estimated Time per Respondent:* 39.75 hours.

*Estimated Total Annual Burden Hours:* 13,555.

*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. 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 23, 2014.

**Bruce A. Sharp,**

*Bureau Clearance Officer.*

[FR Doc. 2014–30522 Filed 12–29–14; 8:45 am]

**BILLING CODE 4810–AS–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0565]**

### Agency Information Collection (State Application for Interment Allowance): Activity Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before January 29, 2015.

**ADDRESSES:** Submit written comments on the collection of information through

*www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0565'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0565'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* State Application for Interment Allowance Under 38 U.S.C., Chapter 23, VA Form 21–530a.

*OMB Control Number:* 2900–0565.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* Data collected on VA Form 21–530a is used to determine a State's eligibility for burial allowance for eligible veterans interred in a State Veteran's Cemetery.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 2, 2014, at page 59560.

*Affected Public:* State, Local or Tribal Government.

*Estimated Annual Burden:* 1,550 hours.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 3,100.

Dated: December 22, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, U.S. Department of Veterans Affairs.*

[FR Doc. 2014–30362 Filed 12–29–14; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0677]**

## Agency Information Collection (Contract for Training and Employment) Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before January 29, 2015.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0677'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0677'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Contract for Training and Employment (Chapter 31, Title 38 U.S. Code), VA Form 28–1903.

*OMB Control Number:* 2900–0677.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* VA Form 28–1903 is used to standardize contracts agreements between VA and training facilities/vendors providing vocational rehabilitation training and employment to veterans. VA uses the data collected to ensure that veterans are receiving training and employment as agreed in the contract.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 3, 2014, at page 59894.

*Affected Public:* Business or other for-profit.

*Estimated Annual Burden:* 1,200 hours.

*Estimated Average Burden per Respondent:* 60 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 1,200.

Dated: December 22, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer. U.S. Department of Veterans Affairs.*

[FR Doc. 2014–30357 Filed 12–29–14; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0678]**

## Agency Information Collection (Agreement To Train on the Job Disabled Veterans) Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before January 29, 2015.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0678'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0678'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Agreement to Train on the Job Disabled Veterans, VA Form 28–1904.

*OMB Control Number:* 2900–0678.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 28–1904 is a written agreement between an On the Job Training (OJT) establishments and VA. The agreement is necessary to ensure that OJT is providing claimants with the appropriate training and supervision, and VA's obligation to provide claimants with the necessary tools, supplies, and equipment for such training.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 2, 2014, at pages 59557–59558.

*Affected Public:* Business or other for-profit.

*Estimated Annual Burden:* 150 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 600.

Dated: December 22, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, U.S. Department of Veterans Affairs.*

[FR Doc. 2014–30374 Filed 12–29–14; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Reasonable Charges for Medical Care or Services; V3.16, 2015 Calendar Year Update and National Average Administrative Prescription Drug Charge Update

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** This Department of Veterans Affairs (VA) notice updates the data for calculating the ''Reasonable Charges'' collected or recovered by VA for medical care or services. This notice also updates the ''National Average Administrative Costs'' for purposes of calculating VA's charges for prescription drugs that were not administered during treatment but provided or furnished by VA to a veteran.

**FOR FURTHER INFORMATION CONTACT:** Romona Greene, Chief Business Office 10NB, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 382–2521. This is not a toll free number.

**SUPPLEMENTARY INFORMATION:** Section 17.101 of 38 Code of Federal Regulations sets forth the ''Reasonable Charges'' for medical care or services provided or furnished by VA to a veteran: ''For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses for care) under a health plan contract; For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or For a nonservice-connected disability incurred as a result of a motor vehicle accident in a state that requires automobile accident reparations insurance.'' Section 17.101 provides the methodologies for establishing billed amounts for several types of charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by Healthcare Common Procedure Coding System (HCPCS) Level II codes.

Section 17.101 provides that the actual charge amounts at individual VA facilities based on these methodologies and the data sources used for calculating those actual charge amounts will either be published as a notice in the **Federal Register** or will be posted on the Internet site of the Veterans Health Administration Chief Business Office at *http://www.va.gov/CBO/apps/rates/index.asp.* Certain charges are hereby updated as stated in this notice and will be effective on January 1, 2015.

In cases where VA has not established charges for medical care or services provided or furnished at VA expense (by either VA or non-VA providers) under other provisions or regulations, the method for determining VA's charges is set forth at 38 CFR 17.101(a)(8).

Based on the methodologies set forth in § 17.101, this notice provides an update to charges for 2015 HCPCS Level II and Current Procedural Terminology (CPT) codes. Charges are also being updated based on more recent versions of data sources for the following charge types: Partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. As of the date of this notice, the actual charge amounts at individual VA facilities based on the methodologies in § 17.101 will be posted at *http://www.va.gov/CBO/apps/rates/index.asp* under the heading ''Reasonable Charges Data Tables'' and identified as ''V3.16 Data Tables (Outpatient and Professional).''

The list of data sources used for calculating the actual charge amounts listed above also will be posted at *http://www.va.gov/CBO/apps/rates/index.asp* under the heading ''Reasonable Charges Data Sources'' and identified as ''Reasonable Charges V3.16 Data Sources (Outpatient and Professional) (PDF).''

Acute inpatient facility charges and skilled nursing facility/sub-acute inpatient facility charges remain the same as set forth in the notice published in the **Federal Register** on September 26, 2014 (79 FR 58048). The effective date of those charges is October 1, 2014. The data tables containing those actual charges are posted at *http://www.va.gov/CBO/apps/rates/index.asp* under the heading ''Reasonable Charges Data Tables'' and identified as ''V3.15 Data Tables (Inpatient).'' The data sources used to calculate these charges are posted at *http://www.va.gov/CBO/apps/rates/index.asp under the heading ''Reasonable Charges Data Sources'' and identified* as ''Reasonable Charges Data Sources V3.15 (Inpatient) (PDF).

We are also updating the list of VA medical facility locations. The list of VA medical facility locations, including the first three digits of their zip codes as well as provider based/non-provider based designations, will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/CBO/apps/rates/index.asp* under the heading ''VA Medical Facility Locations,'' and

identified as ''VA Medical Facility Locations V3.16 (Jan 15).''

As indicated in 38 CFR 17.101(m), when VA provides or furnishes prescription drugs not administered during treatment, ''charges billed separately for such prescription drugs will consist of the amount that equals the total of the actual cost to VA for the drugs and the national average of VA administrative costs associated with dispensing the drugs for each prescription.'' Section 17.101(m) includes the methodology for calculating the national average administrative cost for prescription drug charges not administered during treatment.

VA determines the amount of the national average administrative cost annually for the prior fiscal year (October through September) and then applies the charge at the start of the next calendar year. The national average administrative drug cost for calendar year 2015 is $13.10. This change will be posted at *http://www.va.gov/CBO/payerinfo.asp* and identified as ''CY 2015 Average Administrative Cost for Prescriptions.''

Consistent with § 17.101, the national average administrative cost, the updated data tables, and supplementary tables containing the changes described in this notice will be posted online, as indicated in this notice. This notice will be posted at *http://www.va.gov/CBO/apps/rates/index.asp* under the heading ''Federal Registers, Rules, and Notices'' and identified as, ''V3.16 Federal Register Notice 01/01/15 (Outpatient and Professional), and National Administrative Cost (PDF).'' The national average administrative cost, updated data tables, and the supplementary tables containing the changes described will be effective until changed by a subsequent **Federal Register** notice.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, approved this document on December 18, 2014, for publication.

Dated: December 22, 2014.

**William F. Russo,**

*Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.*

[FR Doc. 2014–30309 Filed 12–29–14; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Section 102(c) of the Veterans Access, Choice, and Accountability Act of 2014

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of Tribal Consultation.

**SUMMARY:** As required by section 102(c) of the Veterans Access, Choice, and Accountability Act of 2014, the Secretary of the Department of Veterans Affairs (VA) and the Director of the Indian Health Service will jointly submit to Congress a report on the feasibility and advisability of entering into and expanding certain reimbursement agreements. VA is seeking Tribal Consultation on section 102(c).

**DATES:** Comments must be received by VA on or before January 14, 2015.

**FOR FURTHER INFORMATION CONTACT:** Tracey Parker Warren, VA Office of Tribal Government Relations by phone at (202) 461–7400 (this is not a toll-free number), or by email at *Tribal governmentconsultation@va.gov.*

**ADDRESSES:** Written comments may be submitted to Tracey Parker Warren, VA Office of Public and Intergovernmental Affairs, Office of Tribal Government Relations by email at *Tribalgovernment consultation@va.gov,* by fax to (202) 273–5716, or by hand-delivery to Director, Office of Tribal Government Relations (075F), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420. Comments should indicate that the submission is in response to ''Notice of Tribal Consultation: Section 102(c) of the Veterans Access, Choice, and Accountability Act of 2014.''

**SUPPLEMENTARY INFORMATION:** VA's Office of Tribal Government Relations (OTGR) is seeking Tribal Consultation on section 102(c) of the Veterans Access, Choice, and Accountability Act of 2014, Public Law (P.L.) 113–146.

Public Law 113–146, section 102(c) (as revised by section 409(b)(2) of Public Law 113–175). OTGR specifically seeks Tribal Consultation in the form of written comments concerning the feasibility and advisability of Indian Health Service and Tribal Health Programs entering into agreements with VA for reimbursement of the costs of direct care services provided to eligible Veterans who are not American Indian or Alaska Native.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, approved this document on December 23, 2014, for publication.

Dated: December 23, 2014.

**William F. Russo,**

*Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.*

[FR Doc. 2014–30527 Filed 12–29–14; 8:45 am]

BILLING CODE 8320–01–P

# FEDERAL REGISTER

Vol. 79 Tuesday,

No. 249 December 30, 2014


Part II

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

## DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 147

Summary of Benefits and Coverage and Uniform Glossary; Proposed Rule

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 54**

**[REG–145878–14]**

**RIN 1545–BM53**

**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**29 CFR Part 2590**

**RIN 1210–AB69**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**45 CFR Part 147**

**[CMS–9938–P]**

**RIN 0938–AS54**

## Summary of Benefits and Coverage and Uniform Glossary

**AGENCY:** Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations regarding the summary of benefits and coverage (SBC) and the uniform glossary for group health plans and health insurance coverage in the group and individual markets under the Patient Protection and Affordable Care Act. It proposes changes to the regulations that implement the disclosure requirements under section 2715 of the Public Health Service Act to help plans and individuals better understand their health coverage, as well as to gain a better understanding of other coverage options for comparison. It proposes changes to documents required for compliance with section 2715 of the Public Health Service Act, including a template for the SBC, instructions, sample language, a guide for coverage example calculations, and the uniform glossary.

**DATES:** *Comment date.* Comments are due on or before March 2, 2015.

**ADDRESSES:** Written comments on these proposed regulations and documents required for compliance (including the template, instructions, sample language, guide for coverage example calculations, and the uniform glossary) may be submitted to the Department of Labor as specified below. Any comment that is submitted will be shared with the Department of Health and Human Services and the Department of the Treasury, and will also be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the Internet exactly as received, and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

Comments, identified by ''Summary of Benefits and Coverage,'' may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, *Attention:* Summary of Benefits and Coverage.

Comments received will be posted without change to *http://www.regulations.gov,* and available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Amy Turner or Beth Baum, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 622–6080; Heather Raeburn or Tricia Beckmann, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (301) 492–4224 or (301) 492–4328.

*Customer service information:* Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers can be found on CMS's Web site (*www.cms.gov/cciio*) and information on health reform can be found at *http://www.healthcare.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act, Public Law 111–152, was enacted on March 30, 2010 (these are collectively known as the ''Affordable Care Act''). The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. The term ''group health plan'' includes both insured and self-insured group health plans.[1] The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (the Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and 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 this reference are sections 2701 through 2728.

Section 2715 of the PHS Act, added by the Affordable Care Act, directs the Departments of Labor, Health and Human Services (HHS), and the Treasury (the Departments) to develop standards for use by a group health plan and a health insurance issuer offering group or individual health insurance coverage in compiling and providing a summary of benefits and coverage (SBC) that ''accurately describes the benefits and coverage under the applicable plan or coverage.'' PHS Act section 2715 also calls for the ''development of standards for the definitions of terms used in health insurance coverage.''

In accordance with the statute, the Departments, in developing such standards, consulted with the National Association of Insurance Commissioners (referred to in this document as the ''NAIC'') through ''a working group composed of representatives of health insurance-related consumer advocacy organizations, health insurance issuers, health care professionals, patient advocates including those representing individuals with limited English proficiency, and other qualified

[1] The term ''group health plan'' is used in title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, and is distinct from the term ''health plan,'' as used in other provisions of title I of the Affordable Care Act. The term ''health plan'' does not include self-insured group health plans.

individuals.'' [2] On July 29, 2011, the NAIC provided its final recommendations to the Departments regarding the SBC. On August 22, 2011, the Departments published in the **Federal Register** proposed regulations (2011 proposed regulations) and an accompanying document with templates, instructions, and related materials for implementing the disclosure provisions under PHS Act section 2715.[3] After consideration of all the comments received on the 2011 proposed regulations and accompanying documents, the Departments published joint final regulations to implement the disclosure requirements under PHS Act section 2715 on February 14, 2012 (2012 final regulations) and an accompanying document soliciting comments on templates, instructions, and related materials.[4] The 2012 final regulations implemented standards for use by a group health plan and a health insurance issuer offering group or individual health insurance coverage in compiling and providing an SBC that ''accurately describes the benefits and coverage under the applicable plan or coverage'' pursuant to PHS Act section 2715.

After the 2012 final regulations were published, the Departments released Frequently Asked Question (FAQs) regarding implementation of the SBC provisions as part of six issuances. The Departments released Affordable Care Act Implementation FAQs Parts VII, VIII, IX, X, XIV, and XIX to answer outstanding questions, including questions related to the SBC.[5] These FAQs addressed questions related to compliance with the requirements of the 2012 final regulations, implemented additional safe harbors,[6] and released updated SBC materials.

The Departments are issuing these proposed regulations, as well as a new set of proposed SBC templates, instructions, an updated uniform glossary, and other materials to incorporate some of the feedback the Departments have received and to make some improvements to the template. This will provide guidance necessary to plans and issuers as they continue to issue SBCs, and will improve the SBC for employers, participants and beneficiaries, and individuals and dependents for use as a tool in making important decisions regarding their health coverage. These modifications clarify when and how a plan or issuer must provide an SBC, and streamline and shorten the SBC template while also adding certain additional elements that the Departments believe will be useful to consumers. The draft updated template, instructions, and supplementary materials are available at *http://cciio.cms.gov* and *http://www.dol.gov/ebsa/healthreform/regulations/summaryofbenefits.html.* The Departments invite comments on all of the documents. Comments should be submitted as described above.

## II. Overview of the Proposed Regulations

### *A. Requirement To Provide a Summary of Benefits and Coverage*

#### 1. Providing the SBC

Paragraph (a) of the 2012 final regulations implements the general disclosure requirement and sets forth the standards for who is required to provide an SBC, to whom, and when. PHS Act section 2715 generally requires that an SBC be provided to applicants, enrollees, and policyholders or certificate holders, at specified times. PHS Act section 2715(d)(3) places the responsibility to provide an SBC on ''(A) a health insurance issuer (including a group health plan that is not a self-insured plan) offering health insurance coverage within the United States; or (B) in the case of a self-insured group health plan, the plan sponsor or designated administrator of the plan (as such terms are defined in section 3(16) of ERISA).'' [7] Accordingly, the 2012 final regulations interpret PHS Act section 2715 to apply to both group health plans and health insurance issuers offering group or individual health insurance coverage. In addition, consistent with the statute, the 2012 final regulations hold the plan administrator of a group health plan responsible for providing an SBC. Under the 2012 final regulations, the SBC must be provided in writing and free of charge.

There are three general scenarios under which an SBC will be provided. An SBC will be provided: (1) By a group health insurance issuer to a group health plan; (2) by a group health insurance issuer or a group health plan to participants and beneficiaries; and (3) by a health insurance issuer to individuals and dependents in the individual market.

The 2012 final regulations specify timeframes according to which the SBC must be provided. After the 2012 regulations were published, the Departments were asked to clarify the meaning of the term ''provided.'' As the Departments stated in Affordable Care Act Implementation FAQs Part VIII, question 7, for purposes of providing an SBC in the context of these regulations, the term ''provided'' means sent. Accordingly, the SBC is timely if it is sent within seven business days, even if not received until after that period.[8]

##### a. Provision of the SBC by an Issuer to a Plan

Paragraph (a)(1)(i) of the 2012 final regulations requires a health insurance issuer offering group health insurance coverage to provide an SBC to a group health plan (or its sponsor) upon an application by the plan for health coverage. The issuer must provide the SBC as soon as practicable following

[2] The NAIC convened a working group (NAIC working group) comprised of a diverse group of stakeholders. This working group met frequently for over one year while developing its recommendations. In developing its recommendations, the NAIC considered the results of various consumer testing sponsored by both insurance industry and consumer associations. Throughout the process, NAIC working group draft documents and meeting notes were displayed on the NAIC's Web site for public review, and several interested parties filed formal comments. In addition to participation from the NAIC working group members, conference calls and in-person meetings were open to other interested parties and individuals and provided an opportunity for non-member feedback. See *www.naic.org/committees_b_consumer_information.htm.*

[3] See proposed regulations, published at 76 FR 52442 (August 22, 2011) and guidance document published at 76 FR 52475 (August 22, 2011).

[4] See final regulations, published at 77 FR 8668 (February 14, 2012) and guidance document published at 77 FR 8706 (February 14, 2012).

[5] See Affordable Care Act Implementation FAQs Part VII (available at *www.dol.gov/ebsa/faqs/faq-aca7.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs7.html*); Part VIII (available at *www.dol.gov/ebsa/faqs/faq-aca8.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs8.html*); Part IX (available at *www.dol.gov/ebsa/faqs/faq-aca9.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9.html*); Part X (available at *www.dol.gov/ebsa/faqs/faq-aca10.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs10.html*); Part XIV (available at *www.dol.gov/ebsa/faqs/faq-aca14.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs14.html*); and Part XIX (available at *www.dol.gov/ebsa/faqs/faq-aca19.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs19.html*).

[6] Some of the enforcement safe harbors and transitions are proposed to be made permanent (several with modifications) by these proposed regulations. The Departments intend to use this rulemaking to develop a permanent approach to those issues and, thereby, discontinue all temporary enforcement policies that were used as a bridge to a permanent rule.

[7] ERISA section 3(16) defines an administrator as: (i) the person specifically designated by the terms of the instrument under which the plan is operated; (ii) if an administrator is not so designated, the plan sponsor; or (iii) in the case of a plan for which an administrator is not designated and plan sponsor cannot be identified, such other person as the Secretary of Labor may by regulation prescribe.

[8] See Affordable Care Act Implementation FAQs Part VIII, question 7, available at *www.dol.gov/ebsa/faqs/faq-aca8.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs8.html.*

receipt of the application, but in no event later than seven business days following receipt of the application. These proposed regulations would clarify when the health insurance issuer offering group health insurance coverage (or plan, if applicable, under paragraph (a)(1)(ii)) must provide the SBC again if the issuer already provided the SBC before application to any entity or individual. If the issuer provides the SBC before application for coverage pursuant to paragraph (a)(1)(i)(D) of the regulations (relating to SBCs upon request), the requirement to provide an SBC upon application is deemed satisfied and such issuer is not required to automatically provide another SBC upon application to the same entity or individual, provided there is no change to the information required to be in the SBC. However, if there has been a change in the information required, a new SBC that includes the correct information must be provided upon application (that is, as soon as practicable following receipt of the application, but in no event later than seven business days following receipt of the application).

Under the 2012 final regulations and these proposed regulations, if there is any change in the information required to be in the SBC that was provided upon application and before the first day of coverage, the issuer must update and provide a current SBC to the plan (or its sponsor) no later than the first day of coverage. If the information is unchanged, the issuer does not need to provide the SBC again in connection with coverage for that plan year, except upon request. These proposed rules would provide clarification with respect to how to satisfy the requirement to provide an SBC when the terms of coverage are not finalized. If the plan sponsor is negotiating coverage terms after an application has been filed and the information required to be in the SBC changes, an updated SBC is not required to be provided to the plan (or its sponsor) (unless an updated SBC is requested) until the first day of coverage. The updated SBC should reflect the final coverage terms under the contract, certificate, or policy of insurance that was purchased.

b. Provision of the SBC by a Plan or Issuer to Participants and Beneficiaries

Under paragraph (a)(1)(ii) of the 2012 final regulations, a group health plan (including the plan administrator), and a health insurance issuer offering group health insurance coverage, must provide an SBC to a participant or beneficiary [9] with respect to each benefit package offered by the plan or issuer for which the participant or beneficiary is eligible.[10] This includes individuals who are qualified beneficiaries under the Consolidated Omnibus Reconciliation Act of 1985 (COBRA).[11] In Affordable Care Act Implementation FAQs Part VIII, question 8, the Departments clarified that while a qualifying event does not, itself, trigger a requirement to provide an SBC, during an open enrollment period, any COBRA qualified beneficiary who is receiving COBRA coverage must be given the same rights to elect different coverage as are provided to similarly situated non-COBRA beneficiaries.[12] In this situation, a COBRA qualified beneficiary who has elected coverage must be provided an SBC just as a similarly situated non-COBRA beneficiary must be provided with one. There are also limited situations in which a COBRA qualified beneficiary may need to be offered different coverage at the time of the qualifying event than the coverage he or she was receiving before the qualifying event and this may trigger a requirement to provide an SBC.[13]

If a plan or issuer distributes any written application materials for enrollment, including any forms or requests for information (in paper form or through a Web site or email) that must be completed for enrollment, the plan or issuer must provide the SBC as part of those materials. If the plan or issuer does not distribute written application materials for enrollment (in either paper or electronic form), the SBC must be provided no later than the first date on which the participant is eligible to enroll in coverage for the participant or any beneficiaries. If there is any change to the information required to be in the SBC that was provided upon application for coverage and before the first day of coverage, the plan or issuer must update and provide a current SBC to a participant or beneficiary no later than the first day of coverage.

These proposed rules would clarify when a plan or issuer must provide the SBC again if the plan or issuer already provided the SBC prior to application. If the plan or issuer provides the SBC prior to application for coverage, the plan or issuer is not required to automatically provide another SBC upon application, if there is no change to the information required to be in the SBC. If there is any change to the information required to be in the SBC by the time the application is filed, the plan or issuer must update and provide a current SBC as soon as practicable following receipt of the application, but in no event later than seven business days following receipt of the application.

These proposed rules also would provide clarification with respect to how to satisfy the requirement to provide an SBC when the terms of coverage are not finalized. If the plan sponsor is negotiating coverage terms after an application has been filed and the information required to be in the SBC changes, the plan or issuer is not required to provide an updated SBC (unless an updated SBC is requested) until the first day of coverage. The updated SBC should reflect the final coverage terms under the contract, certificate, or policy of insurance that was purchased.

Under the 2012 final regulations, the plan or issuer must also provide the SBC to individuals enrolling through a special enrollment period, also called special enrollees.[14] Special enrollees must be provided the SBC no later than when a summary plan description is required to be provided under the timeframe set forth in ERISA section 104(b)(1)(A) and its implementing regulations, which is 90 days from enrollment. To the extent individuals who are eligible for special enrollment and are contemplating their coverage options would like to receive SBCs

[9] ERISA section 3(7) defines a participant as: Any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employers or members of such organization, or whose beneficiaries may be eligible to receive any such benefit. ERISA section 3(8) defines a beneficiary as: a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

[10] With respect to insured group health plan coverage, PHS Act section 2715 generally places the obligation to provide an SBC on both a plan and issuer. As discussed below, under section III.A.1.d., ''Special Rules to Prevent Unnecessary Duplication with Respect to Group Health Coverage'', if either the issuer or the plan provides the SBC, both will have satisfied their obligations. As they do with other notices required of both plans and issuers under Part 7 of ERISA, Title XXVII of the PHS Act, and Chapter 100 of the Code, the Departments expect plans and issuers to make contractual arrangements for sending SBCs. Accordingly, the remainder of this preamble generally refers to requirements for plans or issuers.

[11] See Affordable Care Act Implementation FAQs Part VIII, question 7, available at *www.dol.gov/ebsa/faqs/faq-aca8.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs8.html.*

[12] See 26 CFR 54.4980B–5, Q&A–4(c) (requirement to provide election) and 54.4980B–3, Q&A–3 (definition of similarly situated non-COBRA beneficiary).

[13] See 26 CFR 54.4980B–5, Q&A–4(b).

[14] Regulations regarding special enrollment are available at 26 CFR 54.9801–6, 29 CFR 2590.701–6, and 45 CFR 146.117.

earlier, they may always request an SBC with respect to any particular plan, policy, or benefit package and the SBC is required to be provided as soon as practicable, but in no event later than seven business days following receipt of the request (as discussed more fully below).

c. Provision of the SBC Upon Request in Group Health Coverage

A health insurance issuer offering group health insurance coverage must provide the SBC to a group health plan or its sponsor (and a plan or issuer must provide the SBC to a participant or beneficiary) upon request for an SBC or summary information about the health coverage, as soon as practicable, but in no event later than seven business days following receipt of the request. The SBC must be provided upon request to participants, beneficiaries, and plans (or plan sponsors), including prior to submitting an application for coverage, because the SBC provides information that not only helps consumers and employers understand their coverage, but also helps consumers and employers compare coverage options prior to selecting coverage. Health insurance issuers offering individual market coverage must also provide the SBC to individuals upon request, according to the same timeframe, to allow consumers the same ability to compare coverage options in the individual market as the group market.

Since the issuance of the 2012 final regulations, the Departments have continued to receive questions about providing SBCs upon request, including whether issuers are required to provide SBCs to plans or their sponsors who are ''shopping'' for coverage from different issuers but have not yet submitted an application for coverage. In Affordable Care Act Implementation FAQs Part IX, question 4, the Departments reiterated that an SBC must be provided upon request for an SBC or ''summary information about a health insurance product.'' The latter phrase is intended to ensure that persons who do not ask exactly for a ''summary of benefits and coverage'' still receive one when they explicitly ask for a summary document with respect to a specific health coverage product.[15] The FAQ also referred to other guidance outlining the circumstances in which an SBC may be provided electronically, to assist in reducing the burden of providing multiple SBCs in paper form when requested. Additional information on electronic disclosure of SBCs is discussed later in this preamble.

d. Special Rules To Prevent Unnecessary Duplication With Respect to Group Health Coverage

Paragraph (a)(1)(iii) of the 2012 final regulations includes three special rules to streamline provision of the SBC and avoid unnecessary duplication with respect to group health coverage. The first provides that the requirement to provide an SBC generally will be considered satisfied for all applicable entities if it is provided by any entity, so long as all timing and content requirements are satisfied. The second provides that a single SBC may be provided to a participant and any beneficiaries at the participant's last known address. However, if a beneficiary's last known address is different than the participant's last known address, a separate SBC is required to be provided to the beneficiary at the beneficiary's last known address. Third, the 2012 final regulations provide that SBCs are not required to be provided automatically upon renewal for each benefit package option in group health plans that offer multiple benefit packages. Rather, a plan or issuer is required to provide an SBC automatically upon renewal or reissuance only with respect to the benefit package in which a participant or beneficiary is enrolled. In cases in which an issuer will automatically re-enroll participants and beneficiaries, these proposed rules propose to add that a new SBC is required to be provided with respect to the plan or product in which a participant or beneficiary will be automatically enrolled in accordance with the same timing requirements that apply to a renewal or reissuance. Consistent with the 2012 final regulations, if a participant or beneficiary requests an SBC with respect to one or more other benefit packages for which he or she is eligible, that requested SBC or SBCs must be provided as soon as practicable, but in no event later than seven business days following the receipt of the request.

In addition to retaining these three existing special rules, these proposed regulations would add an additional provision to ensure participants receive information while preventing unnecessary duplication. This would address circumstances where an entity required to provide an SBC with respect to an individual has entered into a binding contract with another party to provide the SBC to the individual. In such a case, the proposed regulations state that the entity would be considered to satisfy the requirement to provide the SBC with respect to the individual if specified conditions are met:

(1) The entity monitors performance under the contract;[16]

(2) If the entity has knowledge that the SBC is not being provided in a manner that satisfies the requirements of this section and the entity has all information necessary to correct the noncompliance, the entity corrects the noncompliance as soon as practicable; and

(3) If the entity has knowledge the SBC is not being provided in a manner that satisfies the requirements of this section and the entity does not have all information necessary to correct the noncompliance, the entity communicates with participants and beneficiaries who are affected by the noncompliance regarding the noncompliance, and begins taking significant steps as soon as practicable to avoid future violations.

The proposed regulations would also add a provision to prevent unnecessary duplication with respect to a group health plan that uses two or more insurance products provided by separate issuers to insure benefits under the plan. The proposed regulations would place responsibility for providing complete SBCs with respect to the plan in such a case on the group health plan administrator. This provision of the proposed regulations states that the group health plan administrator may contract with one of its issuers (or other service providers) to provide the SBC; however, absent a contract to perform the function, an issuer has no obligation to provide an SBC containing information for benefits that it does not insure.

The Departments recognize that a plan sponsor may purchase an insurance product for certain coverage from a particular issuer and purchase a separate insurance product or self-insure with respect to other coverage (such as outpatient prescription drug

[15] The FAQ stated that other general questions about coverage options or discussions about health products do not trigger the requirement to provide an SBC.

[16] The selection and monitoring of service providers for a group health plan, including parties assuming responsibility to complete, provide information for, or deliver SBCs, is a fiduciary act subject to prudence and loyalty duties and prohibited transaction provisions of ERISA. No single fiduciary procedure will be appropriate in all cases; the procedure for selecting and monitoring service providers may vary in accordance with the nature of the plan and other facts and circumstances relevant to the choice of the service provider. More general information on hiring and monitoring service providers is contained in the Department of Labor publication ''Understanding Your Fiduciary Responsibilities Under a Group Health Plan,'' which is available on the Department's Web site at: *www.dol.gov/ebsa/publications/ghpfiduciaryresponsibilities.html.*

coverage). In these circumstances, the first issuer may or may not know of the existence of other coverage, or whether the plan sponsor has arranged the two benefit packages as a single plan or two separate plans. To address these arrangements, these proposed rules propose that, with respect to a group health plan that uses two or more insurance products provided by separate issuers, the group health plan administrator is responsible for providing complete SBCs with respect to the plan. The group health plan administrator may contract with one of its issuers (or other service providers) to perform that function. Absent a contract to perform the function, an issuer has no obligation to provide coverage information for benefits that it does not insure.

The Departments published an FAQ on May 11, 2012 [17] regarding the responsibility to provide an SBC in situations where plans may have benefits provided by more than one issuer. This FAQ provides an enforcement safe harbor for a group health plan that uses two or more insurance products provided by separate issuers with respect to a single group health plan. Under this enforcement safe harbor, the group health plan administrator may synthesize the information into a single SBC or provide multiple partial SBCs that, together, provide all the relevant information to meet the SBC content requirements. In such circumstances, the plan administrator should take steps (such as a cover letter or a notation on the SBCs themselves) to indicate that the plan provides coverage using multiple insurance products and that individuals may contact the plan administrator for more information (and provide the contact information). The Departments extended this enforcement safe harbor for one year on April 23, 2013,[18] and indefinitely on May 2, 2014,[19] and reiterate that the safe harbor continues to apply. The Departments seek comment on whether to codify this policy in the regulation.

e. Provision of the SBC by an Issuer Offering Individual Market Coverage

Paragraph (a)(1)(iv) of the HHS 2012 final regulations sets forth standards applicable to individual health insurance coverage, under which the provision of the SBC by an issuer offering individual market coverage largely parallels the group market requirements described above, with only those changes necessary to reflect the differences between the two markets. The SBC must be provided upon application. That is, a health insurance issuer offering individual health insurance coverage must provide an SBC to an individual or dependent upon receiving an application for any health insurance policy, as soon as practicable following receipt of the application, but in no event later than seven business days following receipt of the application. If there is any change in the information required to be in the SBC that was provided upon application and before the first day of coverage, the issuer must update and provide a current SBC to an individual or dependent no later than the first day of coverage. These proposed rules would clarify when the issuer must provide the SBC again if the issuer already provided the SBC prior to application. If the issuer provides the SBC prior to application for coverage, the issuer is not required to automatically provide another SBC upon application, if there is no change to the information required to be in the SBC. If there is any change to the information required to be in the SBC that was provided prior to application for coverage by the time the application is filed, the issuer must update and provide a current SBC to the same individual or dependent as soon as practicable following receipt of the application, but in no event later than seven business days following receipt of the application. Under the 2012 final regulations, a health insurance issuer offering individual health insurance coverage must provide the SBC to an individual or dependent upon request for the SBC or summary information about the health insurance product, as soon as practicable, but in no event later than seven business days following receipt of the request.

These proposed rules would also address situations where an issuer offering individual market insurance coverage, consistent with applicable Federal and State law, automatically re-enrolls an individual and any dependents into a different plan or product than the plan in which these individuals were previously enrolled. If the issuer automatically re-enrolls an individual covered under a policy, certificate, or contract of insurance (including every dependent) into a policy, certificate, or contract of insurance under a different plan or product, HHS proposes that the issuer would be required to provide an SBC with respect to the coverage in which the individual (including every dependent) will be enrolled, consistent with the timing requirements that apply when the policy is renewed or reissued.

f. Special Rules To Prevent Unnecessary Duplication With Respect to Individual Health Insurance Coverage

In paragraph (a)(1)(v) of the 2012 final regulations, the Secretary of HHS states that, if a single SBC is provided to an individual and any dependents at the individual's last known address, then the requirement to provide the SBC to the individual and any dependents is generally satisfied. However, if a dependent's last known address is different than the individual's last known address, a separate SBC is required to be provided to the dependent at the dependent's last known address.

Student health insurance coverage is a type of individual health insurance coverage provided pursuant to a written agreement between an institution of higher education and a health insurance issuer to students enrolled in that institution of higher education, and their dependents, that meet certain specified conditions.[20] These proposed rules propose to extend an anti-duplication rule similar to that provided with respect to group health coverage to student health insurance coverage, as defined in in 45 CFR 147.145(a). Specifically, HHS proposes that the requirement to provide an SBC with respect to an individual will be considered satisfied for an entity (such as an institution of higher education) if another party (such as a health insurance issuer) provides a timely and complete SBC to the individual. The Departments are also soliciting comments on whether or not a requirement to monitor the provisioning of the SBC in this circumstance should be added.

2. Content

PHS Act section 2715(b)(3) generally provides that the SBC must include:

a. Uniform definitions of standard insurance terms and medical terms so that consumers may compare health coverage and understand the terms of (or exceptions to) their coverage;

[17] *See* Affordable Care Act Implementation FAQs Part IX, question 10, available at *http://www.dol.gov/ebsa/faqs/faq-aca9.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9.html.*

[18] Affordable Care Act Implementation FAQs Set XIV, question 5, available at *www.dol.gov/ebsa/faqs/faq-aca14.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs14.html.*

[19] Affordable Care Act FAQ Set XIX, question 8, available at *www.dol.gov/ebsa/faqs/faq-aca19.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs19.html.*

[20] See 45 CFR 147.145, published at 77 FR 16453 (March 21, 2012).

b. A description of the coverage, including cost sharing, for each category of essential health benefits, and other benefits as identified by the Departments;

c. The exceptions, reductions, and limitations on coverage;

d. The cost-sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations;

e. The renewability and continuation of coverage provisions;

f. A coverage facts label that includes examples to illustrate common benefits scenarios (including pregnancy and serious or chronic medical conditions) and related cost sharing based on recognized clinical practice guidelines;

g. A statement of whether the plan or coverage provides minimum essential coverage (MEC) as defined under section 5000A(f) of the Code, and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage is not less than 60% of such costs;

h. A statement that the SBC is only a summary and that the plan document, policy, or certificate of insurance should be consulted to determine the governing contractual provisions of the coverage; and

i. A contact number to call with questions and an Internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained.

Consistent with the Departments' authority to develop standards with respect to the SBC and with the statutory requirement to consult with the NAIC and other stakeholders, after considering recommendations by the NAIC and comments received on the 2011 proposed regulations, the 2012 final regulations added three content elements: (1) For plans and issuers that maintain one or more networks of providers, an Internet address (or similar contact information) for obtaining a list of the network providers; (2) for plans and issuers that use a formulary in providing prescription drug coverage, an Internet address (or similar contact information) for obtaining information on prescription drug coverage under the plan or coverage; and (3) an Internet address for obtaining the uniform glossary, as well as a contact phone number to obtain a paper copy of the uniform glossary, and a disclosure that paper copies of the uniform glossary are available.

The Departments have received several questions related to content requirements under the 2012 final regulations. One such question relates to the statements about whether a plan or coverage provides MEC, as defined under section 5000A(f) of the Code, and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage meets applicable minimum value (MV) requirements. The preamble to the 2012 final regulations stated that future guidance would address these statements. In April 2013, the Departments issued an updated SBC template (and sample completed SBC) with the addition of statements of whether the plan or coverage provides MEC (as defined under section 5000A(f) of the Code) and whether the plan or coverage meets the MV requirements.[21] In Affordable Care Act Implementation FAQs Part XIV, issued contemporaneously with the updated SBC template, the Departments stated this language is required to be included in SBCs provided with respect to coverage beginning on or after January 1, 2014.[22]

An FAQ issued at that time stated that if a plan or issuer was unable to modify the SBC template for these disclosures, the Departments will not take any enforcement action against a plan or issuer for using the original template authorized at the time the 2012 final regulations were issued, provided that the SBC was furnished with a cover letter or similar disclosure stating whether the plan or coverage does or does not provide MEC and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage does or does not meet the MV standard under the Affordable Care Act.[23] The Departments decline to extend this temporary enforcement safe harbor. Accordingly, effective for SBCs provided in accordance with the applicability date described below for these proposed rules, the statements regarding MEC and MV are required to be included in the SBC. These statements have been modified for added clarity and relevance for consumers, including consumers in the individual market. As of the applicability date described below, the option previously available to include this information in a cover letter or similar disclosure furnished with the SBC is no longer available.

Under section 1303(b)(3)(A) of the Affordable Care Act and implementing regulations at 45 CFR 156.280(f), a QHP issuer that elects to offer a QHP that provides coverage of abortion services for which public funding is prohibited (non-excepted abortion services) must provide a notice to enrollees, as part of the SBC provided at the time of enrollment, of coverage of such services.

In the interest of increasing transparency for consumers shopping for coverage, and to assist issuers with meeting applicable disclosure requirements under section 1303(b)(3)(A) of the Affordable Care Act and its implementing regulations, we are updating the SBC template published contemporaneously with these proposed rules. These proposed rules would require a QHP issuer to disclose on the SBC whether abortion services are covered or excluded and whether coverage is limited to services for which federal funding is allowed (excepted abortion services). The draft instruction guide for individual health insurance, released concurrently with these proposed rules, indicates that coverage of abortion services must be described in the ''services your plan does not cover'' or ''other covered services'' section. We seek comments on this guidance, including whether coverage of abortion services should be included in another section of the template, such as the table occurring immediately prior.

Neither the 2012 final regulations nor these proposed regulations require the SBC to include premium information. The Departments previously stated their understanding that it is administratively and logistically complex to convey premium information in an SBC due to a number of variables, including, for example, when premiums differ based on family size; when, in the group market, employer contributions impact cost of coverage paid by participants and beneficiaries; and when, for coverage sold through an individual market Exchange, advance payments of the premium tax credit impact the cost of coverage paid by individuals and dependents. In Affordable Care Act

[21] See Affordable Care Act Implementation FAQs Part XIV, question 1, available at *www.dol.gov/ebsa/faqs/faq-aca14.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs14.html.*

[22] The guidance with respect to statements regarding MEC and MV was originally issued for SBCs provided with respect to coverage beginning on or after January 1, 2014, and before January 1, 2015 (referred to as the ''second year of applicability''). See Affordable Care Act Implementation FAQs Part XIV, question 1, available at *www.dol.gov/ebsa/faqs/faq-aca14.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs14.html.* This guidance was extended to be applicable until further guidance was issued. See Affordable Care Act Implementation FAQs Part XIX, question 7, available at *www.dol.gov/ebsa/faqs/faq-aca19.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs19.html.*

[23] See Affordable Care Act Implementation FAQs Part XIV, question 2, available at *www.dol.gov/ebsa/faqs/faq-aca14.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs14.html.*

Implementation FAQs Part VIII, question 16, the Departments clarified that a plan or issuer may choose to add premium information to the SBC.[24] If a plan or issuer wishes to include this information, it should be added at the end of the SBC template.[25]

As mentioned above, the statute provides that the SBC must include ''a contact number for the consumer to call with additional questions and an Internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained.'' The 2012 final regulations state the SBC must include ''contact information for questions and obtaining a copy of the plan document or the insurance policy, certificate, or contract of insurance (such as a telephone number for customer service and an Internet address for obtaining a copy of the plan document or the insurance policy, certificate, or contact of insurance).'' Questions have arisen as to whether this provision of the statute and regulations requires that all plans and issuers must post underlying plan documents automatically on an Internet Web site.

These proposed rules would clarify that all plans and issuers must include on the SBC contact information for questions. However, because the statutory language regarding Internet posting uses the terms ''individual coverage policy'' and ''group certificate of coverage,'' which we interpret to refer only to insurance, these proposed regulations propose that only issuers must also include an Internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained. The Departments note that this proposal would require these documents to be easily available to individuals, plan sponsors, and participants and beneficiaries shopping for coverage prior to submitting an application for coverage. For the group market only, because the actual ''certificate of coverage'' is not available until after the plan sponsor has negotiated the terms of coverage with the issuer, an issuer is permitted to satisfy this requirement with respect to plan sponsors that are shopping for coverage by posting a sample group certificate of coverage for each applicable product. After the actual certificate of coverage is executed, it must be easily available to plan sponsors and participants and beneficiaries via an Internet web address. The Departments invite comments on this approach, including the costs and benefits of also requiring self-insured plans to post underlying plan documents on the Internet.

The Departments also note that, separate from the SBC requirement, provisions of other applicable law require disclosure of plan documents and other instruments governing the plan. For example, ERISA section 104 and the Department of Labor's implementing regulations[26] provide that, for plans subject to ERISA, the plan documents and other instruments under which the plan is established or operated must generally be furnished by the plan administrator to plan participants[27] upon request. In addition, the Department of Labor's claims procedure regulations (applicable to ERISA plans), as well as the Departments' claims and appeals regulations under the Affordable Care Act (applicable to all non-grandfathered group health plans and health insurance issuers in the group and individual markets),[28] set forth rules regarding claims and appeals, including the right of claimants (or their authorized representatives) upon appeal of an adverse benefit determination (or a final internal adverse benefit determination) to be provided by the plan or issuer, upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the claimant's claim for benefits. Plans and issuers must continue to comply with these provisions and any other applicable laws.

Section 2715(b)(3)(F) of the PHS Act also requires that an SBC contain a ''coverage facts label.'' For ease of reference, the 2012 final regulations used the term ''coverage examples'' in place of the statutory term. Consumer testing performed on behalf of the NAIC[29] demonstrated that the coverage examples facilitated individuals' understanding of the benefits and limitations of a plan or policy and helped them make more informed choices about their options. That testing also showed that individuals were able to comprehend that the examples were only illustrative. Additionally, while some plans provide useful coverage calculators to their enrollees to help them make health coverage decisions, they are not uniform across all plans and most are not available to individuals prior to enrollment, making it difficult for individuals and employers to make coverage comparisons.

The Departments have taken a phased approach to implementing the coverage examples. The 2012 final regulations require the SBC to include two coverage examples: Having a baby (normal delivery) and routine maintenance of well-controlled type 2 diabetes. Each benefit scenario represents a hypothetical situation consisting of a sample treatment plan and medical costs, based on national average allowed charges, for each of the conditions stated above. Each example describes the sample care costs and how much the hypothetical patient will be responsible for paying, including deductibles, copayments and coinsurance.

In addition to the two existing coverage examples, these proposed regulations would require a third coverage example—a simple foot fracture (with emergency room visit). This example is proposed as a health problem that most individuals could experience (whereas having a baby and type 2 diabetes affect a subset of the population). Comments are welcome on the choice of this coverage example.

In documents published contemporaneously with these proposed rules, the Departments are publishing draft updated claims and pricing data underlying the two existing coverage examples as well as a narrative description and claims and pricing data associated with the third proposed coverage example.[30] These materials

[24] See Affordable Care Act Implementation FAQs Part VIII, question 16, available at *www.dol.gov/ebsa/faqs/faq-aca8.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs8.html.*

[25] In accordance with section 1303(b)(3)(B) of the Affordable Care Act and 45 CFR 156.280(f)(2), if the SBC provided at the time of enrollment notice includes the QHP premium amount, it must display only the total premium for the plan, inclusive of all covered benefits and services.

[26] 29 CFR 2520.104b–1.

[27] ERISA section 3(7) defines a ''participant'' to include any employee or former employee who is or may become eligible to receive a benefit of any type from an employee benefit plan or whose beneficiaries may be eligible to receive any such benefit. Accordingly, employees who are not enrolled but are, for example, in a waiting period for coverage, or who are otherwise shopping amongst benefit package options at open season, generally are considered plan participants for this purpose.

[28] 29 CFR 2560.503–1. *See also* 29 CFR 2590.715–2719(b)(2)(i) and 45 CFR 147.136(b)(2)(i), requiring nongrandfathered plans and issuers to incorporate the internal claims and appeals processes set forth in 29 CFR 2560.503–1.

[29] A summary of the focus group testing done by America's Health Insurance Plans is available at: *http://www.naic.org/documents/committees_b_consumer_information_101012_ahip_focus_group_summary.pdf,* a summary of the focus group testing done by Consumers Union on the coverage examples is available at: *http://prescriptionforchange.org/wordpress/wp-content/uploads/2011/08/A_New_Way_of_Comparing_Health_Insurance.pdf.*

[30] For further discussion of changes to the claims and pricing data underlying the two existing coverage examples, as well as the claims and pricing data with respect to the new coverage example, see section III later in this preamble.

would provide plans and issuers with the specific information necessary to simulate benefits covered under the plan or policy for the coverage example portion of the SBC (including relevant medical items and services, dates of service, billing codes, and allowed charges). The Departments invite comment on all aspects of the benefits scenario proposed as a third coverage example and on all aspects of the coverage example materials made available on the HHS Web site contemporaneously with the publication of these proposed regulations.

In May 2012, the Departments announced the development of a calculator that plans and issuers could use as a safe harbor for the first year of applicability to complete the coverage examples in a streamlined fashion.[31] The calculator allows plans and issuers to input a discrete number of informational elements about the benefit package, taken from data fields used to populate the ''Important Questions'' and ''Common Medical Events'' chart sections of the SBC template.'' The output of the calculator is a coverage example that can be added to the SBC. On its Web site, HHS provided the coverage examples calculator, instructions for using the calculator, the algorithm that was used to create the calculator, and a checklist providing information on the inputs needed to use the coverage calculator.

The original FAQ regarding the coverage example calculator stated that because using a limited number of inputs in the calculator will be less accurate than the results that a plan or issuer could obtain by processing the full list of claims associated with each coverage example through the plan's or issuer's system, the calculator would be allowed as a transitional tool for the first year of applicability of the SBC requirements. Use of the coverage example calculator was subsequently extended for the second year of applicability, and later extended until superseded by further guidance.[32] Given the complexity of the existing coverage examples, the addition of a proposed new, third coverage example to the SBC requirements, and the fact that all coverage examples are merely illustrative and will not be an accurate predictor of a specific individual's actual costs, the Departments are proposing that the coverage example calculator be authorized for continued use. The Departments invite comments on this proposal.

3. Appearance

PHS Act section 2715 sets forth standards related to the appearance and language of the SBC. Specifically, the statute provides that the SBC is to be presented in a uniform format, in a culturally and linguistically appropriate manner utilizing terminology understandable by the average plan enrollee, that does not exceed four double-sided pages in length, and does not include print smaller than 12-point font. Since the issuance of the 2011 proposed regulations, plans and issuers have informed the Departments that they are concerned about including all of the required information in the SBC while also satisfying the limitation on the length of the document of four double-sided pages.

The instruction guides for completing the SBC template (issued contemporaneously with the 2012 final regulations) included a special rule stating that, to the extent a plan's terms that are required to be in the SBC template cannot reasonably be described in a manner consistent with the template format and instructions, the plan or issuer must accurately describe the relevant plan terms while using its best efforts to do so in a manner that is still as consistent with the instructions and template format as reasonably possible. Such situations may occur, for example, if a plan provides a different structure for provider network tiers or drug tiers than is contemplated by the template and associated instructions, if a plan provides different benefits based on facility type (such as hospital inpatient versus non-hospital inpatient), in a case where the effects of a health flexible spending arrangement (health FSA) or a health reimbursement arrangement (HRA) are being described, or if a plan provides different cost sharing based on participation in a wellness program. The new SBC template that is being published contemporaneously with these proposed regulations eliminates some information from the SBC that is not required by statute based on comments from stakeholders, which is intended to make it easier for plans to include all of the required information in the SBC while also satisfying the statutory page limit. These reductions are significant; the sample completed template has been reduced from four double-sided pages to two and a half double-sided pages. The Departments invite comments on whether the modifications maintain critical information while shortening it enough to ensure that SBCs do not extend beyond the statutory page limit and, if not, what other changes should be made to ensure the minimum content, appearance, and language requirements are met while also providing consistency in formatting to allow comparisons for individuals. Comments are invited on potential ways to reconcile the statutory page limit with the statutory contents, appearance, and format requirements, particularly the need for the summary to present information in an understandable, accurate, and meaningful way that facilitates comparisons of health options, including those that have disparate and comparatively complex features. Specifically, comments are invited on the sorts of plans that have difficulty meeting the statutory limit, and what other sorts of accommodations may be appropriate for those plans.

Paragraph (a)(3) of the 2012 final regulations requires plans and issuers to provide the SBC in the form, and in accordance with the instructions for completing the SBC, that are specified by the Secretaries in guidance. A guidance document published contemporaneously with the 2012 final regulations served as such guidance specified by the Secretaries, and stated that SBCs provided in connection with group health plan coverage may be provided either as a stand-alone document or in combination with other summary materials (for example, a summary plan description (SPD)), if the SBC information is intact and prominently displayed at the beginning of the materials (such as immediately after the Table of Contents in an SPD) and in accordance with the timing requirements for providing an SBC.[33] For health insurance coverage offered in

[31] *See* ACA Implementation FAQ Set IX, question 9, available at *www.dol.gov/ebsa/faqs/faq-aca9.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9.html.*

[32] The FAQ with respect to the coverage example calculator was originally issued for SBCs provided for coverage beginning before January 1, 2014 (referred to as the ''first year of applicability). See Affordable Care Act Implementation FAQs Part IX, question 9, available at *www.dol.gov/ebsa/faqs/faq-aca9.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9.html.* It was extended for SBCs provided for coverage beginning on or after January 1, 2014, and before January 1, 2015 (referred to as the ''second year of applicability''), in Affordable Care Act Implementation FAQs Part XIV, question 5 (available at *www.dol.gov/ebsa/faqs/faq-aca14.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs14.html*) and later extended until superseded by further guidance is issued in Affordable Care Act Implementation FAQs Part XIX, question 7 (available at *www.dol.gov/ebsa/faqs/faq-aca19.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs19.html*).

[33] Summary of Benefits and Coverage and Uniform Glossary—Templates, Instructions, and Related Materials; and Guidance for Compliance, 77 FR 8706, 8707 (February 14, 2012).

the individual market, the SBC must be provided as a stand-alone document, but HHS notes that it can be included in the same mailing as other plan materials. These proposed rules do not make any changes to these requirements.

In Affordable Care Act Implementation FAQs Part VIII, question 8, the Departments stated that an SBC provided in connection with a group health plan may include a reference to the SPD (although not as a substitute for any required content element of the SBC).[34] Another FAQ provided that for SBCs provided in connection with coverage in the individual market, while it is not permitted to substitute a reference to any other document for any content element of the SBC, an SBC may include a reference to another document in the SBC footer.[35] In addition, wherever an SBC provides information that fully satisfies a particular content element of the SBC, it may add to that information a reference to specified pages or portions of other documents in order to supplement or elaborate on that information. As stated in the previous FAQs, SBCs provided in connection with a group health plan may include a reference to the SPD or other documents and SBCs provided in connection with individual market coverage may reference other documents to supplement or elaborate on information in the SBC.

Affordable Care Act Implementation FAQs Part IX, question 7, addressed combining SBCs or SBC elements to provide a side-by-side comparison.[36] Some plans or issuers provide web-based or print materials to illustrate the differences between benefit package options (including comparison charts and broker comparison Web sites). Issuers and plans (and agents and brokers working with such plans) may display SBCs, or parts of SBCs, in a way that facilitates comparisons of different benefit package options by individuals and employers shopping for coverage. For example, on a Web site, viewers could be allowed to select a comparison of only the deductibles, out-of-pocket limits, or other cost sharing information relating to several benefit package options. This could be achieved by providing the information from the Answers column in the ''What is the overall deductible?'' row of the SBC for several benefit packages, but without having to repeat the first ''Important Questions'' and ''Why this Matters'' columns, or the other content rows, of the SBC for each of the benefit packages. However, such a chart, Web site, or other comparison would not, itself, satisfy the requirements under PHS Act section 2715 and the 2012 final regulations to provide the SBC. The full SBC for each of the benefit packages included in the comparison view or tool must be made available in accordance with the statute and regulations.

4. Form

a. Group Health Plan Coverage

To facilitate faster and less burdensome disclosure of the SBC, and to be consistent with PHS Act section 2715(d)(2), which permits disclosure in either paper or electronic form, the 2012 final regulations set forth rules to permit greater use of electronic transmittal of the SBC. For SBCs provided electronically by a plan or issuer to participants and beneficiaries, the 2012 final regulations make a distinction between a participant or beneficiary who is already covered under the group health plan, and a participant or beneficiary who is eligible for coverage but not enrolled in a group health plan. This distinction should provide new flexibility in some circumstances, while also ensuring adequate consumer protections. For participants and beneficiaries who are already covered under the group health plan, the 2012 final regulations permit provision of the SBC electronically if the requirements of the Department of Labor's regulations at 29 CFR 2520.104b–1 are met. (Paragraph (c) of those regulations includes an electronic disclosure safe harbor.[37]) For participants and beneficiaries who are eligible for but not enrolled in coverage, the 2012 final regulations permit the SBC to be provided electronically if the format is readily accessible and a paper copy is provided free of charge upon request. Additionally, to reduce paper copies that may be unnecessary, if the electronic form is an Internet posting, the plan or issuer must timely advise the individual in paper form (such as a postcard) or email that the documents are available on the Internet, provide the Internet address, and notify the individual that the documents are available in paper form upon request. The Departments note that the rules for participants and beneficiaries who are eligible for but not enrolled in coverage are substantially similar to the requirements for an issuer providing an electronic SBC to a group health plan (or its sponsor) under paragraph (a)(4)(i) of the regulations. Finally, plans, and participants and beneficiaries (both those covered and those eligible but not enrolled) have the right to receive an SBC in paper format, free of charge, upon request.

In Affordable Care Act Implementation FAQs Part IX, question 1, the Departments adopted an additional safe harbor related to electronic delivery of SBCs.[38] That FAQ stated that SBCs may be provided electronically to participants and beneficiaries in connection with their online enrollment or online renewal of coverage under the plan. The FAQ also stated SBCs also may be provided electronically to participants and beneficiaries who request an SBC online. In either case, the individual must have the option to receive a paper copy upon request. These proposed regulations would include this additional safe harbor into the applicable regulations.

After the publication of the 2012 final regulations, the Departments were asked to provide model language to meet the requirement to advise participants and beneficiaries that the SBC is available on the Internet. In Affordable Care Act FAQs Part VIII, question 12, the Departments provided the following model language:[39]

**Availability of Summary Health Information**

As an employee, the health benefits available to you represent a significant component of your compensation package. They also provide important protection for you and your family in the case of illness or injury.

[34] See Affordable Care Act Implementation FAQs Part VIII, question 8, available at *www.dol.gov/ebsa/faqs/faq-aca8.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs8.html.*

[35] *See* Affordable Care Act Implementation FAQs Part IX, question 5, available at *http://www.dol.gov/ebsa/faqs/faq-aca9.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9.html.*

[36] *See* Affordable Care Act Implementation FAQs Part IX, question 7, available at *http://www.dol.gov/ebsa/faqs/faq-aca9.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9.html.*

[37] On April 7, 2011, the Department of Labor published a Request for Information regarding electronic disclosure at 76 FR 19285. In it, the Department of Labor stated that it is reviewing the use of electronic media by employee benefit plans to furnish information to participants and beneficiaries covered by employee benefit plans subject to ERISA. Because these proposed regulations propose to adopt the ERISA electronic disclosure rules by cross-reference, any changes that may be made to 29 CFR 2520.104b–1 in the future would also apply to the SBC.

[38] *See* Affordable Care Act Implementation FAQs Part IX, question 4, available at *http://www.dol.gov/ebsa/faqs/faq-aca9.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9.html.*

[39] *See* Affordable Care Act Implementation FAQs Part VIII, question 12, available at *http://www.dol.gov/ebsa/faqs/faq-aca8.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs8.html.*

Your plan offers a series of health coverage options. Choosing a health coverage option is an important decision. To help you make an informed choice, your plan makes available a Summary of Benefits and Coverage (SBC), which summarizes important information about any health coverage option in a standard format, to help you compare across options.

The SBC is available on the web at: *www.Web site.com/SBC.* A paper copy is also available, free of charge, by calling 1–XXX–XXX–XXXX (a toll-free number).

The FAQ also stated that plans and issuers have flexibility with respect to the postcard and may choose to tailor it in many ways.

b. Individual Health Insurance Coverage and Self-Insured Non-Federal Governmental Plans

The HHS 2012 final regulations established a provision under paragraph (a)(4)(iii)(C) that deems health insurance issuers in the individual market to be in compliance with the requirement to provide the SBC to an individual requesting summary information about a health insurance product prior to submitting an application for coverage if the issuer provides the content required under paragraph (a)(2) of the regulations to the federal health reform Web portal described in 45 CFR 159.120. Issuers must submit all of the content required under paragraph (a)(2), as specified in guidance by the Secretary, to be deemed compliant with the requirement to provide an SBC to an individual requesting summary information prior to submitting an application for coverage. HHS intends to continue to facilitate the operation of this deemed compliance option for individual market issuers. An issuer must provide all SBCs other than the ''shopper'' SBC contemplated in the deemed compliance provision as required under the 2012 final regulations (and any future final regulations), including providing the SBC at the time of application and renewal.

The Departments note that consistent with the 2012 final regulations, an issuer in the individual market must provide the SBC in a manner that can reasonably be expected to provide actual notice regardless of the format. An issuer in the individual market satisfies the form requirements set forth in the 2012 final regulations if it does at least one of the following: (1) Hand-delivers a printed copy of the SBC to the individual or dependent; (2) mails a printed copy of the SBC to the mailing address provided to the issuer by the individual or dependent; (3) provides the SBC by email after obtaining the individual's or dependent's agreement to receive the SBC or other electronic disclosures by email; (4) posts the SBC on the Internet and advises the individual or dependent in paper or electronic form, in a manner compliant with 45 CFR 147.200(a)(4)(iii)(A)(1) through (3), that the SBC is available on the Internet and includes the applicable Internet address; or (5) provides the SBC by any other method that can reasonably be expected to provide actual notice.

The 2012 final regulations also provide that the obligation to provide an SBC cannot be satisfied electronically in the individual market unless: the format is readily accessible; the SBC is displayed in a location that is prominent and readily accessible; the SBC is provided in an electronic form that can be electronically retained and printed; the SBC is consistent with the appearance, content and language requirements; and the issuer notifies the individual that a paper SBC is available upon request without charge.

These proposed rules would clarify the form and manner for SBCs provided by a self-insured non-Federal governmental plan. Such SBCs may be provided in paper form. Alternatively, such SBCs may be provided electronically if the plan conforms to either the substance of the provisions applicable to ERISA plans (in paragraph (a)(4)(ii) of the regulations) or to individual health insurance coverage (in paragraph (a)(4)(iii) of the regulations).

5. Language

PHS Act section 2715(b)(2) provides that standards shall ensure that the SBC ''is presented in a culturally and linguistically appropriate manner.'' The 2012 final regulations provide that a plan or issuer for this purpose is considered to provide the SBC in a culturally and linguistically appropriate manner if the thresholds and standards of 45 CFR 147.136(e), implementing standards for the form and manner of notices related to internal claims appeals and external review, are met as applied to the SBC.[40] At the time of publication of these proposed regulations, 268 U.S. counties (78 of which are in Puerto Rico) meet this threshold. The overwhelming majority of these are Spanish; however, Chinese, Navajo, and Tagalog are present in a few counties, affecting five states (specifically, Alaska, Arizona, California, New Mexico, and Utah).[41]

To help plans and issuers meet the language requirements of paragraph (a)(5) of the 2012 final regulations, as requested by commenters, HHS has provided written translations of the SBC template, sample language, and the uniform glossary in Chinese, Navajo, Spanish, and Tagalog.[42] HHS may also make these materials available in other languages to facilitate voluntary distribution of SBCs to other individuals with limited English proficiency. We seek comment on this standard, and on other potential standards that could facilitate consistency across the Departments' programs. The Departments anticipate that translations of the updated SBC template, sample language, and uniform glossary will be available when these proposed regulations are finalized.

Nothing in these proposed regulations should be construed as limiting an individual's rights under Federal or State civil rights statutes, such as Title VI of the Civil Rights Act of 1964 (Title VI) which prohibits recipients of Federal financial assistance, including issuers participating in Medicare Advantage, from discriminating on the basis of race, color, or national origin. To ensure non-discrimination on the basis of national origin, recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by limited English proficient persons. For more information, see, ''Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,'' available at *http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/policyguidancedocument.html.*

*B. Notice of Modification*

PHS Act section 2715(d)(4) directs that a group health plan or health insurance issuer offering group or individual health insurance coverage must provide notice of any material modification (as defined under ERISA section 102) in any of the terms of the plan or coverage involved that is not reflected in the most recently provided SBC. For purposes of PHS Act section 2715, the 2012 final regulations interpret the statutory reference to the SBC to mean that only a material modification in the terms of the plan or coverage that would affect the content of the SBC, that is not reflected in the most recently provided SBC, and that occurs

[40] *See* 75 FR 43330 (July 23, 2010), as amended by 76 FR 37208 (June 24, 2011).

[41] Guidance on the HHS Web site contains a list of the counties that meet this threshold. This information is available at *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/2009-13-CLAS-County-Data_12-05-14_clean_508.pdf.*

[42] Translations are available at *http://cciio.cms.gov/programs/consumer/summaryandglossary/index.html.*

other than in connection with a renewal or reissuance of coverage would trigger the notice. In these circumstances, the notice would be required to be provided to enrollees (or, in the individual market, covered individuals) no later than 60 days prior to the date on which such change will become effective. A material modification, within the meaning of section 102 of ERISA, includes any modification to the coverage offered under a plan or policy that, independently, or in conjunction with other contemporaneous modifications or changes, would be considered by an average plan participant (or in the case of individual market coverage, an average individual covered under a policy) to be an important change in covered benefits or other terms of coverage under the plan or policy.[43] A material modification could be an enhancement of covered benefits or services or other more generous plan or policy terms. It includes, for example, coverage of previously excluded benefits or reduced cost-sharing. A material modification could also be a material reduction in covered services or benefits, as defined in 29 CFR 2520.104b–3(d)(3) of the Department of Labor's regulations, or more stringent requirements for receipt of benefits. As a result, it also includes changes or modifications that reduce or eliminate benefits, increase cost-sharing, or impose a new referral requirement.[44] (However, changes to the information in the SBC resulting from changes in the regulatory requirements for an SBC are not changes to the plan or policy requiring the mid-year provision of a notice of modification, unless specified in such new requirements.)

The 2012 final regulations require that this notice be provided only for changes other than in connection with a renewal or reissuance of coverage. At renewal, plans and issuers must provide an updated SBC in accordance with the requirements otherwise applicable to SBCs. PHS Act section 2715 and paragraph (b) of the 2012 final regulations specify the timing for providing a notice of modification in situations other than in connection with a renewal or reissuance of coverage. To the extent a plan or policy implements a mid-year change that is a material modification that affects the content of the SBC, and that occurs other than in connection with a renewal or reissuance of coverage, the 2012 final regulations require a notice of modification to be provided 60 days in advance of the effective date of the change.[45] Plans and issuers are permitted to either provide an updated SBC reflecting the modifications or provide a separate notice describing the material modifications. These proposed regulations do not make any changes to these requirements.

For ERISA-covered group health plans subject to PHS Act section 2715, this notice is required in advance of the timing requirements under the Department of Labor's regulations at 29 CFR 2520.104b–3 for providing a summary of material modification (SMM) (generally not later than 210 days after the close of the plan year in which the modification or change was adopted, or, in the case of a material reduction in covered services or benefits, not later than 60 days after the date of adoption of the modification or change). In situations where a complete notice is provided in a timely manner under PHS Act section 2715(d)(4), an ERISA-covered plan will also satisfy the requirement to provide an SMM under Part 1 of ERISA.

### *C. Requirement To Provide the Uniform Glossary*

Sections 2715(g)(2) and (g)(3) of the PHS Act direct the Departments to develop standards for definitions, at a minimum, for certain insurance-related and medical terms (and also directs the Departments to develop standards for such other insurance-related and medical terms as will help consumers compare the terms of their coverage and the extent of medical benefits (or exceptions to those benefits)).[46] The 2012 final regulations included several additional terms in the uniform glossary.[47] As discussed later in this preamble, the Departments propose to revise definitions for several of these terms and also add several new terms to the Glossary.[48]

A plan or issuer must make the uniform glossary available upon request within seven business days. To satisfy this requirement, a plan or issuer must provide the content described in paragraph (a)(2)(i)(L) of the 2012 final regulations, discussed earlier in this preamble, which requires that the SBC include an Internet address for obtaining the uniform glossary, a contact phone number to obtain a paper copy of the uniform glossary, and a disclosure that paper copies are available upon request. The Internet address may be a place where the document can be found on the plan's or issuer's Web site, or the Web site of either the Department of Labor or HHS. However, a plan or issuer must make the glossary available upon request, in either paper or electronic form (as requested), within seven business days after receipt of the request. Group health plans and health insurance issuers must provide the uniform glossary in the appearance specified by the Departments and without modification, so that the glossary is presented in a uniform format and uses terminology understandable by the average plan enrollee or individual covered under an individual policy.

### *D. Preemption*

Section 2715 of the PHS Act is incorporated into ERISA section 715, and Code section 9815, and is subject to the preemption provisions of ERISA section 731 and PHS Act section 2724 (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)). Under these provisions, the requirements of part 7 of ERISA and part A of title XXVII of the PHS Act, as amended by the Affordable Care Act, are not to be ''construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health

[43] *See* DOL Information Letter, Washington Star/Washington-Baltimore Newspaper Guild to Munford Page Hall, II, Baker & McKenzie (February 8, 1985).

[44] *See, e.g.,* Ward v. Maloney, 386 F.Supp.2d 607, 612 (M.D.N.C. 2005), which discusses judicial interpretations of when an amendment is and is not a material modification.

[45] In Affordable Care Act Implementation FAQs Part XX, the Departments addressed notice requirements triggered by a closely-held for-profit corporation's health plan ceasing to provide coverage for some or all contraceptive services mid-plan year. The FAQ clarified that, for plans subject to ERISA that reduce or eliminate coverage of contraceptive services after having provided such coverage, expedited disclosure requirements for material reductions in covered services or benefits apply. See *http://www.dol.gov/ebsa/pdf/faq-aca20.pdf* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs20.html.*

[46] The insurance-related terms identified in the statute are: co-insurance, co-payment, deductible, excluded services, grievance and appeals, non-preferred provider, out-of-network co-payments, out-of-pocket limit, preferred provider, premium, and UCR (usual, customary and reasonable) fees. The medical terms identified in the statute are: durable medical equipment, emergency medical transportation, emergency room care, home health care, hospice services, hospital outpatient care, hospitalization, physician services, prescription drug coverage, rehabilitation services, and skilled nursing care.

[47] The additional terms in the uniform glossary issued with the 2012 final regulations are: allowed amount, balance billing, complications of pregnancy, emergency medical condition, emergency services, habilitation services, health insurance, in-network co-insurance, in-network co-payment, medically necessary, network, out-of-network co-insurance, plan, preauthorization, prescription drugs, primary care physician, primary care provider, provider, reconstructive surgery, specialist, and urgent care.

[48] For further discussion of proposed changes to the Uniform Glossary, see section III later in this preamble.

insurance issuers in connection with group or individual health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement'' of part A of title XXVII of the PHS Act. Accordingly, State laws that impose requirements on health insurance issuers that are stricter than those imposed by the Affordable Care Act will not be superseded by the Affordable Care Act. In addition, PHS Act section 2715(e) provides that the standards developed under PHS Act section 2715(a), ''shall preempt any related State standards that require [an SBC] that provides less information to consumers than that required to be provided under this section, as determined by the [Departments].'' Reading these two preemption provisions together, the 2012 final regulations do not, and these proposed regulations would not, prevent States from imposing separate, additional disclosure requirements on health insurance issuers.

*E. Failure To Provide*

PHS Act section 2715(f), incorporated into ERISA section 715 and Code section 9815, provides that a group health plan (including its administrator), and a health insurance issuer offering group or individual health insurance coverage, that ''willfully fails to provide the information required under this section shall be subject to a fine of not more than $1,000 for each such failure.'' In addition, under PHS Act section 2715(f), a separate fine may be imposed for each individual or entity for whom there is a failure to provide an SBC. The 2012 final regulations addressed the different underlying enforcement structures and penalty mechanisms for the Departments.

HHS clarified in the 2012 final regulations that HHS will enforce these provisions in a manner consistent with 45 CFR 150.101 through 150.465. In these proposed regulations, the Department of Labor proposes to clarify that it will use the same process and procedures for assessment of the civil fine as used for failure to file an annual report under 29 CFR 2560.502c-2 and 29 CFR part 2570, subpart C. In accordance with ERISA section 502(b)(3), 29 U.S.C. 1132(b)(3), the Secretary of Labor is not authorized to assess this fine against a health insurance issuer. Moreover, in these proposed regulations, the IRS proposes to clarify that the IRS will enforce this section using a process and procedure consistent with section 4980D of the Code.

**III. Proposed Documents Authorized for Plan Years Beginning on or After September 1, 2015**

Contemporaneously with the issuance of these proposed regulations, the Departments are making available on their Web sites a proposed revised SBC template and attendant materials (including a proposed revised uniform glossary) to comply with the disclosure requirements of PHS Act section 2715. These materials are proposed to be authorized by the Departments for disclosure provided in accordance with the applicability date proposed later in this preamble.[49] This section of the preamble describes the changes proposed to each document.

The following documents, available at *http://cciio.cms.gov* and *www.dol.gov/ebsa/healthreform*, are available for review and the Departments solicit comment on them:

1. *SBC template.* The document is available in accessible format (PDF) and modifiable format (MS Word).

2. *Sample completed SBC.* This document was completed using information for sample health coverage and provides a general illustration of a completed SBC for coverage under a group health plan.

3. *Instructions.* For assistance in completing the SBC template, separate instructions are available for group health coverage and for individual health insurance coverage. Additionally, with respect to the individual market instructions, the Office of Personnel Management (OPM) may provide additional instructions for Multi-State Plan issuers.

4. *Why This Matters language.* The SBC instructions include language that must be used when completing the ''Why This Matters'' column on the first page of the SBC template. Two language options are provided depending on whether the answer in the applicable row is ''yes'' or ''no'', according to the terms of the plan or coverage.

5. *Coverage examples.* Information provided by HHS at *http://cciio.cms.gov* (and accessible via hyperlink from *www.dol.gov/ebsa/healthreform*) the information necessary to perform the coverage example calculations.

6. *Uniform glossary.* The uniform glossary of health coverage and medical terms may not be modified by plans or issuers.

Many of the changes proposed in the updated versions of these documents streamline the SBC. As discussed earlier in this preamble, these changes were made after feedback the Departments received from stakeholders, and the revised proposed template and other documents are intended to make it easier for plans to satisfy the statutory page limit. The revised documents also incorporate information from several sets of FAQs that addressed implementation of the SBC provisions.

Additionally, the revised documents include changes made to conform with new requirements that have become applicable since the issuance of the 2012 final regulations. These changes include the addition of information regarding minimum value and minimum essential coverage and changes to be consistent with the Affordable Care Act's requirement to eliminate all annual limits on essential health benefits.

Finally, the revised documents reflect changes to the coverage examples. The coding and pricing data for the existing coverage examples (having a baby through normal delivery and managing well controlled type 2 diabetes) have been updated to account for changes in the data since the issuance of the final regulations in 2012. Additionally the Departments proposed to change the data source for the claims and pricing information from a data source that used multiple commercial payor databases, to one based on a single database, the Truven Health Analytics MarketScan® Commercial Claims and Encounters database, adjusted to estimate 2014 pricing to account for health care inflation since 2010. The Departments seek comment on whether to update this data using more recent 2013 Marketscan® database claims data that will be available for the final rule, and on appropriate ways to inform consumers of the resulting increases in sample care costs when the pricing data is updated, for example, through a cover letter or other disclosure provided along with the SBC. The Departments also seek specific comment on two diagnosis codes in the having a baby (normal delivery) scenario. The pricing data associated with these two codes, DRG 775 and DRG 795 (inpatient hospital charges for the mother, and inpatient hospital charges for the baby, respectively), appears higher than expected. These diagnosis codes represent bundled services and may include charges that are duplicated by other codes currently included in the scenario. The Departments seek comment on the accuracy of this pricing data.

Additionally, the SBC template, sample completed template, and coverage example documents have been updated to reflect that these proposed regulations would require a third

[49] See section IV of this preamble for a full discussion of the proposed applicability date.

coverage example—a simple foot fracture (with emergency room visit), as described earlier in this preamble. The same Marketscan® database has been used to produce the claim and pricing data for this scenario.

The Departments invite comment on all aspects of the proposed changes to the SBC template and other materials, and the uniform glossary. The Departments also request specific comments regarding the Instruction Guides about whether plans and issuers should be permitted to add additional benefits that are either covered or excluded in the ''other covered services'' and ''excluded services'' section that are not already required to be disclosed by the instructions.

## IV. Applicability

After publication of the 2012 final regulations, the Departments received questions about the applicability of the SBC requirements to certain types of group health plans, including expatriate health plans, Medicare Advantage plans, and insurance products that are no longer being offered for purchase (closed blocks of business). The Departments addressed the applicability of the SBC requirements to each of these types of coverage in FAQs issued after publication of the 2012 final regulations. The Departments also received questions regarding the applicability of the SBC requirements to benefits provided under certain account-type arrangements such as health FSAs,[50] HRAs,[51] and health savings accounts (HSAs),[52] as well as benefits provided through an employee assistance program (EAP) and other excepted benefits.

In May 2012, the Departments issued FAQs that discussed the special circumstances and considerations faced by expatriate plans in complying with the SBC requirements.[53] The FAQs provided temporary relief from enforcement. Under recently enacted legislation,[54] expatriate health plans are not subject to the requirement to provide an SBC. The Departments intend to issue guidance implementing this legislation. The temporary relief from enforcement for expatriate plans will remain in place until such guidance is issued.

Moreover, in August 2012, the Departments issued FAQs that discussed group health plans providing Medicare Advantage benefits, which are Medicare benefits financed by the Medicare Trust Funds, for which the benefits are set by Congress and regulated by the Centers for Medicare & Medicaid Services. Again, the FAQs provided a temporary nonenforcement policy, because Medicare Advantage benefits are not health insurance coverage and Medicare Advantage organizations are not required to provide an SBC with respect to such benefits. Additionally, there are separately required disclosures required to be provided by Medicare Advantage organizations, to ensure that enrollees in these plans receive the necessary information about their coverage and benefits. These rules propose to exempt from the SBC requirements a group health plan benefit package that provides Medicare Advantage benefits.

The Departments also issued FAQs in May 2012 addressing insurance products that are no longer being offered for purchase (''closed blocks of business''). Some interested stakeholders had requested enforcement relief with respect to such products because the products are no longer offered for purchase and the SBC is intended to be a tool to help group health plans and individuals as they shop for coverage. The Departments had provided temporary relief through an FAQ provided that certain conditions were met: (1) The insurance product is no longer being actively marketed; (2) the health insurance issuer stopped actively marketing the product prior to September 23, 2012, when the requirement to provide an SBC was first applicable to health insurance issuers; and (3) the health insurance issuer has never provided an SBC with respect to such product. [55] The Departments reiterate that relief here, but note that if an insurance product was actively marketed for business on or after September 23, 2012, and is no longer being actively marketed for business, or if the plan or issuer ever provided an SBC in connection with the product, the plan and issuer must provide the SBC with respect to such coverage, as required by PHS Act section 2715 and the regulations.

As under the 2012 final regulations, an SBC need not be provided for plans, policies, or benefit packages that constitute excepted benefits. Thus, for example, an SBC need not be provided for stand-alone dental or vision plans or health FSAs if they constitute excepted benefits under the Departments' regulations.[56] If benefits under a health FSA do not constitute excepted benefits, the health FSA is a group health plan generally subject to the SBC requirements. For a health FSA that does not meet the criteria for excepted benefits and that is integrated with other major medical coverage, the SBC is prepared for the other major medical coverage, and the effects of the health FSA can be denoted in the appropriate spaces on the SBC, including those for deductibles, copayments, coinsurance, and benefits otherwise not covered by the major medical coverage. A stand-alone health FSA, which does not meet the criteria for excepted benefits, must satisfy the SBC requirements independently.

On October 1, 2014, the Departments published final rules on excepted benefits.[57] These regulations stated that an EAP constitutes excepted benefits if it satisfies certain requirements.[58] If an EAP qualifies as excepted benefits, the EAP need not separately satisfy the SBC requirements.

The Departments have issued guidance regarding HRAs since the publication of the 2012 final regulations.[59] An HRA is a group health

[50] See Code section 106(c)(2).

[51] See IRS Notice 2002–45, 2002–2 C.B. 93.

[52] See Code section 223.

[53] *See* Affordable Care Act Implementation FAQs Part IX, question 13, available at *http://www.dol.gov/ebsa/faqs/faq-aca9.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9.html.*

[54] See Consolidated and Further Continuing Appropriations Act, 2015, Division M, Expatriate Health Coverage Clarification Act of 2014, Section 3(d).

[55] *See* Affordable Care Act Implementation FAQs Part IX, question 12, available at *http://www.dol.gov/ebsa/faqs/faq-aca9.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9.html.*

[56] See 26 CFR 54.9831–1(c), 29 CFR 2590.732(c), 45 CFR 146.145(c).

[57] 79 FR 59130 (October 1, 2014).

[58] The first requirement is that the EAP does not provide significant benefits in the nature of medical care. For this purpose, the amount, scope, and duration of covered services are taken into account. (See preamble discussion at 79 FR 59133 for examples). The second requirement is that the EAP's benefits cannot be coordinated with the benefits under another group health plan. For this purpose, participants in the group health plan must not be required to use and exhaust benefits under the EAP (making the EAP a ''gatekeeper'') before an individual is eligible for benefits under the other group health plan; and participant eligibility for benefits under the EAP must not be dependent on participation in another group health plan. The third requirement is that no employee premiums or contributions may be required as a condition of participation in the EAP. The fourth requirement is that an EAP that constitutes excepted benefits may not impose any cost-sharing requirements.

[59] On September 13, 2013, DOL and the Treasury published guidance on the application of the market reforms and other provisions of the Affordable Care Act to health reimbursement arrangements (HRAs), certain health flexible spending arrangements (health FSAs) and certain other employer health care arrangements. See DOL Technical Release 2013–03, available at *http://www.dol.gov/ebsa/newsroom/tr13-03.html,* and IRS Notice 2013–54, available at *http://www.irs.gov/pub/irs-drop/n-13-54.pdf.* HHS also issued guidance to reflect that HHS concurs in the application of the laws under its jurisdiction as set forth in the DOL and Treasury Department guidance. See Insurance Standards Bulletin,

plan. The Departments' guidance on HRAs clarifies that such arrangements are subject to the group market reform provisions of the Affordable Care Act, including the prohibition on annual limits under PHS Act section 2711 and the requirement to provide certain preventive services without cost sharing under PHS Act section 2713. The Departments' guidance further clarifies that such arrangements will not violate the market reform provisions when integrated with a group health plan that complies with those provisions (and that such arrangements cannot be integrated with individual market policies to satisfy the market reforms).

Benefits under an HRA generally do not constitute excepted benefits, and thus HRAs are generally subject to the SBC requirements. An HRA integrated with other major medical coverage under a group health plan need not separately satisfy the SBC requirements; the SBC is prepared for the other major medical coverage, and the effects of employer allocations to an account under the HRA can be denoted in the appropriate spaces on the SBC, including those for deductibles, copayments, coinsurance, and benefits otherwise not covered by the other major medical coverage.

HSAs generally are not group health plans and thus generally are not subject to the SBC requirements. Nevertheless, an SBC prepared for a high deductible health plan associated with an HSA can (but is not required to) mention the effects of employer contributions to HSAs in the appropriate spaces on the SBC, including those for deductibles, copayments, coinsurance, and benefits otherwise not covered by the high deductible health plan.

## V. Applicability Date

Changes to the current requirements to provide an SBC, notice of modification, and uniform glossary under PHS Act section 2715 and the 2012 final regulations are proposed to apply for disclosures with respect to participants and beneficiaries who enroll or re-enroll in group health coverage through an open enrollment period (including re-enrollees and late enrollees) beginning on the first day of the first open enrollment period that begins on or after September 1, 2015. With respect to disclosures to participants and beneficiaries who enroll in group health coverage other than through an open enrollment period (including individuals who are newly eligible for coverage and special enrollees), the requirements of these proposed regulations are proposed to apply beginning on the first day of the first plan year that begins on or after September 1, 2015. For disclosures to plans, and to individuals and dependents in the individual market, these requirements are proposed to apply to health insurance issuers beginning on September 1, 2015. We solicit comments on these proposed applicability dates.

## VI. Economic Impact and Paperwork Burden

### *A. Executive Orders 12866 and 13563—Departments of Labor and HHS*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). As discussed below, the Departments have concluded that these proposed regulations would not have economic impacts of $100 million or more in any one year or otherwise meet the definition of an ''economically significant rule'' under Executive Order 12866. Nonetheless, consistent with Executive Orders 12866 and 13563, the Departments have provided an assessment of the potential benefits and the costs associated with this proposed regulation.

The primary benefits of these proposed regulations come from improved information, which will enable consumers, both individuals and employers, to better understand the health insurance coverage they have and provide, and make better coverage decisions based on their preferences with respect to benefit design, level of financial protection, and cost. The Departments believe that such improvements will result in a more efficient, competitive market. These proposed regulations will also benefit consumers by reducing the time they spend searching for and compiling health plan and coverage information.

The Departments have continued using the cost methodology that was used to estimate the costs presented in the 2012 final regulations. Since publication of the 2012 final regulations, the Departments have refined assumptions and estimates to incorporate better data. The estimates presented in these proposed regulations are a result of those efforts and represent the Departments' best estimates.

The primary cost of the proposed regulations is requiring issuers and plans to create a third coverage example, a simple foot fracture (with emergency room visit). This third coverage example will fit on the same page as the two existing coverage examples in the SBC template, so no new material costs are required by these proposed regulations. The quantified costs of these proposed regulations are for the actual production of the new coverage example.

These proposed regulations allow issuers and plans to continue to use the ''Coverage Example Calculator.'' [60] This calculator benefits issuers and plan sponsors by reducing the required time to produce the coverage examples. The calculator allows plans to either manually populate less than 20 data points on the plan's design for one plan at a time, or to enter the data points for multiple plans at once. Most of the data fields needed for the new, proposed coverage example are already required to create the other two, already required coverage examples. While plan sponsors and issuers are not required to use the Coverage Example Calculator, the Departments expect that many will. Those choosing to perform the calculations without the calculator will make their own determination that it is more efficient and economically advantageous, or otherwise more appropriate for them to do so.

Using assumptions similar to those used in the regulatory impact analysis of the 2012 final regulations, with respect

Application of Affordable Care Act Provisions to Certain Healthcare Arrangements, September 16, 2013, available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/cms-hra-notice-9-16-2013.pdf.* On May 13, 2013, two FAQs were made available on the IRS Web site addressing employer healthcare arrangements, available at: *www.irs.gov/uac/Newsroom/Employer-Health-Care-Arrangements.* On November 6, 2014, the Departments issued three FAQs on the compliance of premium reimbursement arrangements. See ACA Implementation FAQs Part XXII, available at *http://www.dol.gov/ebsa/pdf/faq-aca22.pdf* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs22.html.*

[60] *http://www.cms.gov/cciio/Resources/forms-reports-and-other-resources/index.html#sbcug.* For more information on the calculator, see section II.A.3 earlier in this preamble.

to plans and issuers that do not use the Coverage Example Calculator, the Departments estimate that large issuers and third-party administrators (TPAs), for *all* their plans and products, would spend a total of approximately 40 additional hours creating the new coverage example (30 hours for medium firms, and 20 hours for small firms). Once the new coverage example is completed, the Departments estimate that large firms would spend an estimated 25 hours in later years updating, while medium firms would spend 19 hours and small firms would spend 13 hours.

This leads to an estimated cost in the first year of $3.4 million and for each subsequent year of $2.1 million to produce the coverage example. Actual cost could be lower as firms organize their data in a manner that will allow them to use the automated functions of the Coverage Example Calculator. Tables 1 and 2 detail the calculations used to obtain the cost estimate for creating the new, proposed coverage example. The Paperwork Reduction Act section below contains a discussion of additional assumptions and data used to develop this estimate.

TABLE 1—YEAR 1, CREATING NEW COVERAGE EXAMPLE

| Type of labor | Number of firms | Hours per firm | Cost per hour | Total hour burden | Equivalent costs of hours |
|---|---|---|---|---|---|
| **Issuers** | | | | | |
| Large: | | | | | |
| IT | 75 | 22.0 | $84 | 1,650 | $138,584 |
| Benefits | 75 | 16.0 | 62 | 1,200 | 74,796 |
| Legal | 75 | 2.0 | 130 | 150 | 19,491 |
| Sub-total | | | | 3,000 | 232,871 |
| Medium: | | | | | |
| IT | 250 | 16.5 | 84 | 4,125 | 346,459 |
| Benefits | 250 | 12.0 | 62 | 3,000 | 186,990 |
| Legal | 250 | 1.5 | 130 | 375 | 48,728 |
| Sub-total | | | | 7,500 | 582,176 |
| Small: | | | | | |
| IT | 175 | 11.0 | 84 | 1,925 | 161,681 |
| Benefits | 175 | 8.0 | 62 | 1,400 | 87,262 |
| Legal | 175 | 1.0 | 130 | 175 | 22,740 |
| Sub-total | | | | 3,500 | 271,682 |
| **TPAs** | | | | | |
| Large: | | | | | |
| IT | 158 | 22.0 | 84 | 3,476 | 291,949 |
| Benefits | 158 | 16.0 | 62 | 2,528 | 157,570 |
| Legal | 158 | 2.0 | 130 | 316 | 41,061 |
| Sub-total | | | | 6,320 | 490,581 |
| Medium: | | | | | |
| IT | 526 | 16.5 | 84 | 8,679 | 728,949 |
| Benefits | 526 | 12.0 | 62 | 6,312 | 393,427 |
| Legal | 526 | 1.5 | 130 | 789 | 102,523 |
| Sub-total | | | | 15,780 | 1,224,899 |
| Small: | | | | | |
| IT | 368 | 11.0 | 84 | 4,048 | 339,992 |
| Benefits | 368 | 8.0 | 62 | 2,944 | 183,500 |
| Legal | 368 | 1.0 | 130 | 368 | 47,818 |
| Sub-total | | | | 7,360 | 571,309 |
| Total | | | | 43,460 | 3,373,517 |

TABLE 2—YEAR 2, CREATING NEW COVERAGE EXAMPLE

| Type of labor | Number of firms | Hours per firm | Cost per hour | Total hour burden | Equivalent costs of hours |
|---|---|---|---|---|---|
| **Issuers** | | | | | |
| Large: | | | | | |
| IT | 75 | 13.8 | $84 | 1,031 | $86,615 |
| Benefits | 75 | 10.0 | 62 | 750 | 46,748 |
| Legal | 75 | 1.3 | 130 | 94 | 12,182 |
| Sub-total | | | | 1,875 | 145,544 |
| Medium: | | | | | |

TABLE 2—YEAR 2, CREATING NEW COVERAGE EXAMPLE—Continued

| Type of labor | Number of firms | Hours per firm | Cost per hour | Total hour burden | Equivalent costs of hours |
|---|---|---|---|---|---|
| IT | 250 | 10.3 | 84 | 2,578 | 216,537 |
| Benefits | 250 | 7.5 | 62 | 1,875 | 116,869 |
| Legal | 250 | 0.9 | 130 | 234 | 30,455 |
| Sub-total | | | | 4,688 | 363,860 |
| Small: | | | | | |
| IT | 175 | 6.9 | 84 | 1,203 | 101,050 |
| Benefits | 175 | 5.0 | 62 | 875 | 54,539 |
| Legal | 175 | 0.6 | 130 | 109 | 14,212 |
| Sub-total | | | | 2,188 | 169,801 |
| **TPAs** | | | | | |
| Large: | | | | | |
| IT | 158 | 13.8 | 84 | 2,173 | 182,468 |
| Benefits | 158 | 10.0 | 62 | 1,580 | 98,481 |
| Legal | 158 | 1.3 | 130 | 198 | 25,663 |
| Sub-total | | | | 3,950 | 306,613 |
| Medium: | | | | | |
| IT | 526 | 10.3 | 84 | 5,424 | 455,593 |
| Benefits | 526 | 7.5 | 62 | 3,945 | 245,892 |
| Legal | 526 | 0.9 | 130 | 493 | 64,077 |
| Sub-total | | | | 9,863 | 765,562 |
| Small: | | | | | |
| IT | 368 | 6.9 | 84 | 2,530 | 212,495 |
| Benefits | 368 | 5.0 | 62 | 1,840 | 114,687 |
| Legal | 368 | 0.6 | 130 | 230 | 29,886 |
| Sub-total | | | | 4,600 | 357,068 |
| Total | | | | 27,163 | 2,108,448 |

*B. Paperwork Reduction Act*

1. Department of Labor and Department of the Treasury

To implement PHS Act section 2715 and these proposed regulations, collection of information requirements relate to the provision of the following:

- Summary of benefits and coverage.
- Coverage examples (as components of each SBC).
- A uniform glossary of health coverage and medical terms (uniform glossary).
- Notice of modifications.

A copy of the information collection request (ICR) may be obtained by contacting the PRA addressee: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Email: *ebsa.opr@dol.gov.* ICRs submitted to OMB also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

This analysis includes the coverage examples that are part of the SBC disclosure, therefore, the Departments calculate a single burden estimate for purposes of this section, assuming the information collection request for the SBC (including coverage examples) totals eight (8) sides of a page in length.

The Departments assume fully-insured ERISA plans will rely on health insurance issuers and self-insured plans will rely on TPAs to perform these functions. While self-insured plans may prepare SBCs internally, the Departments make this simplifying assumption because most plans appear to rely on issuers and TPAs for the purpose of administrative duties, such as enrollment and claims processing. Thus, the Departments use health insurance issuers and TPAs as the unit of analysis for the purposes of estimating administrative costs.

The Departments estimate there are a total of 500 issuers and 1,050 TPAs affected by this information collection.[61] Because HHS shares the hour and cost burden for fully-insured plans with the Departments of Labor and the Treasury, HHS assumes 50 percent of the hour and cost burden estimates to account for burden for issuers in the individual market and 15 percent of the burden for TPAs to account for those TPAs serving self-insured non-Federal governmental plans. The Departments of Labor and the Treasury assume the other 50 percent of the burden related to issuers to account for burden servicing fully insured ERISA plans, and 85 percent of the burden related to TPAs to account for the burden related to ERISA self-insured plans.

To account for variation in costs due to firm size and the number of plans and individuals they service, the Departments divide issuers into small, medium, and large categories.[62]

[61] The estimate for the number of issuers is based on the number of issuers for the group and individual market filing with HHS for the Medical Loss Ratio regulations. See 45 CFR part 158. The number of TPAs is based on the U.S. Census's 2011 Statistics of U.S. Businesses that reports there are 3,157 TPA's. Previous discussions with industry experts led to assuming about one-third of the TPA's (1,052) could be providing services to self-insured plans.

[62] The Departments define small issuers as those with total earned premiums less than $50 million; medium issuers as those with total earned premiums between $50 million and $999 million; and large issuers as those with total earned

Continued

Accordingly, the Departments estimate that there are approximately 175 small, 250 medium, and 75 large issuers. The Departments lack information to create a similar split for TPAs, so they assume a similar distribution resulting in an estimate of approximately 368 small, 526 medium, and 158 large TPAs.

The estimated hour burden and equivalent cost for the collections of information are as follows: The Departments estimate an administrative burden on issuers and TPAs to make appropriate changes to IT systems and processes and make updates to the SBCs and coverage examples. The Departments estimate that large firms would spend 190 hours (40 hours of which would be new due to the proposed regulation) in the first year, medium firms would spend 75 percent of large firm hour burden, and small firms would spend 50 percent of the large firm hour burden to perform these tasks. The total burden would be split among IT professionals (55 percent), benefits professionals (40 percent), and legal professionals (5 percent), with hourly labor rates of $83.99, $62.33, and $129.94 respectively.[63] Clerical labor rates are $30.42 per hour.

Tables 3 (first year) and 4 (subsequent years) show the calculations used to obtain the hours burden of 153,600 hours (first year) and 141,600 hours (subsequent years) and the equivalent cost burden of $11.9 million (first year) and $11.0 million (subsequent years) for issuers and TPAs to prepare the SBCs and coverage examples. In addition, clerical employees would spend 653,000 hours with an equivalent cost of $19.8 million in each year preparing and distributing the SBCs.

Based on the foregoing, the total hours burden for this information collection would be 806,000 hours for the first year (794,000 hours for subsequent years) with an equivalent cost of $31.7 million for the first year ($30.8 million for subsequent years). This burden is split evenly between the Departments of Labor and the Treasury.

TABLE 3—UPDATE SBC INCLUDING COVERAGE EXAMPLES, YEAR 1

| Type of Labor | Number of firms | Hours per firm | Cost per hour | Total hour burden | Total cost burden |
|---|---|---|---|---|---|
| **Issuers** | | | | | |
| Large: | | | | | |
| IT | 75 | 52.3 | 84 | 3,919 | 329,136 |
| Benefits | 75 | 38.0 | 62 | 2,850 | 177,641 |
| Legal | 75 | 4.8 | 130 | 356 | 46,291 |
| Sub-Total | | | | 7,125 | 553,067 |
| Medium: | | | | | |
| IT | 250 | 39.9 | 84 | 9,969 | 837,275 |
| Benefits | 250 | 29.0 | 62 | 7,250 | 451,893 |
| Legal | 250 | 3.6 | 130 | 906 | 117,758 |
| Sub-Total | | | | 18,125 | 1,406,926 |
| Small: | | | | | |
| IT | 175 | 26.1 | 84 | 4,572 | 383,992 |
| Benefits | 175 | 19.0 | 62 | 3,325 | 207,247 |
| Legal | 175 | 2.4 | 130 | 416 | 54,006 |
| Sub-Total | | | | 8,313 | 645,245 |
| **TPAs** | | | | | |
| Large: | | | | | |
| IT | 158 | 88.8 | 84 | 14,034 | 1,178,745 |
| Benefits | 158 | 64.6 | 62 | 10,207 | 636,190 |
| Legal | 158 | 8.1 | 130 | 1,276 | 165,784 |
| Sub-Total | | | | 25,517 | 1,980,719 |
| Medium: | | | | | |
| IT | 526 | 67.8 | 84 | 35,656 | 2,994,766 |
| Benefits | 526 | 49.3 | 62 | 25,932 | 1,616,329 |
| Legal | 526 | 6.2 | 130 | 3,241 | 421,197 |
| Sub-Total | | | | 64,830 | 5,032,293 |

premiums of $1 billion or more. The premium revenue data come from the 2009 NAIC financial statements, also known as ''Blanks,'' where insurers report information about their various lines of business.

[63] The Departments' estimated 2015 hourly labor rates include wages, other benefits, and overhead are calculated as follows: mean wage from the 2013 National Occupational Employment Survey (April 2014, Bureau of Labor Statistics *http://www.bls.gov/news.release/pdf/ocwage.pdf*); wages as a percent of total compensation from the Employer Cost for Employee Compensation (June 2014, Bureau of Labor Statistics *http://www.bls.gov/news.release/ecec.t02.htm*); overhead as a multiple of compensation is assumed to be 25 percent of total compensation for paraprofessionals, 20 percent of compensation for clerical, and 35 percent of compensation for professional; annual inflation assumed to be 2.3 percent annual growth of total labor cost since 2013 (Employment Costs Index data for private industry, September 2014 *http://www.bls.gov/news.release/eci.nr0.htm*). Computer Systems Analysts (15–1121): $41.02(2013 BLS Wage rate)/0.69(ECEC ratio) *1.35(Overhead Load Factor) *1.023(Inflation rate) −2(Inflated 2 years from base year) = $83.99; Compensation, benefits, and job analysis specialists (13–1141): $30.44(2013 BLS Wage rate)/0.69(ECEC ratio) *1.35(Overhead Load Factor) *1.023(Inflation rate) −2(Inflated 2 years from base year) = $62.33; Legal Professional (23–1011): $63.46(2013 BLS Wage rate)/0.69(ECEC ratio) *1.35(Overhead Load Factor) *1.023(Inflation rate) −2(Inflated 2 years from base year) = $129.94; Secretaries, Except Legal, Medical, and Executive (43–6014): $16.35(2013 BLS Wage rate)/0.675(ECEC ratio) *1.2(Overhead Load Factor) *1.023(Inflation rate) −2(Inflated 2 years from base year) = $30.42.

TABLE 3—UPDATE SBC INCLUDING COVERAGE EXAMPLES, YEAR 1—Continued

| Type of Labor | Number of firms | Hours per firm | Cost per hour | Total hour burden | Total cost burden |
|---|---|---|---|---|---|
| **Small** | | | | | |
| IT | 368 | 44.4 | 84 | 16,344 | 1,372,716 |
| Benefits | 368 | 32.3 | 62 | 11,886 | 740,879 |
| Legal | 368 | 4.0 | 130 | 1,486 | 193,065 |
| Sub-Total | | | | 29,716 | 2,306,660 |
| Total | | | | 153,625 | 11,924,910 |

TABLE 4—UPDATE SBC INCLUDING COVERAGE EXAMPLES, SUBSEQUENT YEARS

| Type of Labor | Number of firms | Hours per firm | Cost per hour | Total hour burden | Total cost burden |
|---|---|---|---|---|---|
| **Issuers** | | | | | |
| Large | | | | | |
| IT | 75 | 48.1 | 84 | 3,609 | 303,151 |
| Benefits | 75 | 35.0 | 62 | 2,625 | 163,616 |
| Legal | 75 | 4.4 | 130 | 328 | 42,637 |
| Sub-Total | | | | 6,563 | 509,404 |
| Medium | | | | | |
| IT | 250 | 36.8 | 84 | 9,195 | 772,314 |
| Benefits | 250 | 26.8 | 62 | 6,688 | 416,832 |
| Legal | 250 | 3.3 | 130 | 836 | 108,622 |
| Sub-Total | | | | 16,719 | 1,297,768 |
| Small: | | | | | |
| IT | 175 | 24.1 | 84 | 4,211 | 353,677 |
| Benefits | 175 | 17.5 | 62 | 3,063 | 190,886 |
| Legal | 175 | 2.2 | 130 | 383 | 49,743 |
| Sub-Total | | | | 7,656 | 594,305 |
| **TPAs** | | | | | |
| Large | | | | | |
| IT | 158 | 81.8 | 84 | 12,926 | 1,085,686 |
| Benefits | 158 | 59.5 | 62 | 9,401 | 585,964 |
| Legal | 158 | 7.4 | 130 | 1,175 | 152,696 |
| Sub-Total | | | | 23,503 | 1,824,346 |
| Medium: | | | | | |
| IT | 526 | 62.5 | 84 | 32,890 | 2,762,414 |
| Benefits | 526 | 45.5 | 62 | 23,920 | 1,490,924 |
| Legal | 526 | 5.7 | 130 | 2,990 | 388,518 |
| Sub-Total | | | | 59,800 | 4,641,856 |
| Small | | | | | |
| IT | 368 | 40.9 | 84 | 15,054 | 1,264,343 |
| Benefits | 368 | 29.8 | 62 | 10,948 | 682,389 |
| Legal | 368 | 3.7 | 130 | 1,369 | 177,823 |
| Sub-Total | | | | 27,370 | 2,124,555 |
| Total | | | | 141,610 | 10,992,235 |

The Departments also estimate the cost burden associated with the SBC, Uniform Glossary and Notice of Modification. These costs are discussed below.

• *SBC*—The Departments estimate that approximately 60.6 million SBCs will be delivered with 527,000 going to ERISA plans and 60.1 million going to participants and beneficiaries

annually.[64] The Departments assume 50 percent of the SBCs going to plans would be sent electronically while 38 percent of SBCs would be sent electronically to plan participants. Accordingly, the Departments estimate that about 23.4 million SBCs would be distributed electronically and about 37.2 million SBCs would be distributed on paper. The Departments assume there are costs only for paper disclosures, with de minimis costs for electronic disclosures. The SBC, with coverage examples, is assumed to be four double-sided pages (eight page sides) in length. Paper SBCs sent to participants would have no postage costs as they could be included in mailings with other plan materials, however all notices sent to beneficiaries living apart from the participant would be mailed and have a 49 cent postage costs. Printing costs would be five cents per page. Each document sent by mail would have a one minute preparation burden, with the task performed by a clerical worker. Based on the foregoing, the total cost burden to prepare and distribute the SBC would be $16.4 million.

- *Uniform Glossary*—The Departments assume that 2.5 percent of those who receive paper SBCs will request glossaries in paper form (that is, about 1.1 million glossary requests). The total cost burden to prepare and distribute paper copies of the Uniform Glossaries would be $760,000.
- *Notice of Modifications*—The Departments assume that issuers and plans will send notices of modification to covered participants and beneficiaries, and that 2 percent of covered participants and beneficiaries will receive such notices (1.2 million notices). As with the SBC, 50 percent of plans and 38 percent of policy holders will receive electronic notices. Paper notices are assumed to be of the same length as an SBC, and will incur a postage cost of 49 cents. The total cost burden to prepare and distribute the notices of modification would be $640,000.

Based on the foregoing, the total annual cost burden is estimated to be $16.4 million. This burden is split evenly between the Departments of Labor and the Treasury.

TABLE 5—PREPARATION AND DISTRIBUTION COSTS: COST BURDEN

| | Number of disclosures | Number of disclosures sent on paper | Material and printing costs | Postage costs | Total cost burden |
|---|---|---|---|---|---|
| *SBC with Coverage Examples to Group Health Plan:* | | | | | |
| Renewal or Application | 527,328 | 263,664 | $105,466 | $0 | $105,466 |
| Sub-total | 527,328 | 263,664 | 105,466 | 0 | 105,466 |
| *SBC with Coverage Examples to Participants and Beneficiaries:* | | | | | |
| Upon Application or Eligibility | 2,030,000 | 1,015,000 | 406,000 | 0 | 406,000 |
| Upon Renewal | 58,000,000 | 35,960,000 | 14,384,000 | 0 | 14,384,000 |
| Beneficiaries Living Apart | 90,000 | 90,000 | 36,000 | 44,100 | 80,100 |
| Sub-total | 60,120,000 | 36,975,000 | 14,826,000 | 44,100 | 14,870,100 |
| *Uniform Glossary* | 1,102,000 | 1,102,000 | 220,400 | 539,980 | 760,380 |
| *Notice of Modification* | 1,160,000 | 719,200 | 287,680 | 352,408 | 640,088 |
| Total | 62,909,328 | 39,059,864 | 15,439,546 | 936,488 | 16,376,034 |

TABLE 6—PREPARATION AND DISTRIBUTION COSTS: HOUR BURDEN

| | Number of disclosures | Number of disclosures sent on paper | Clerical hours | Clerical costs | Total hour burden | Total equivalent cost |
|---|---|---|---|---|---|---|
| *SBC with Coverage Examples to Group Health Plan:* | | | | | | |
| Renewal or Application | 527,328 | 263,664 | 4,394 | $130,074 | 4,394 | $130,074 |
| Sub-total | 527,328 | 263,664 | 4,394 | 130,074 | 4,394 | 130,074 |
| *SBC with Coverage Examples To Participants and Beneficiaries:* | | | | | | |
| Upon Application or Eligibility | 2,030,000 | 1,015,000 | 16,917 | 500,733 | 16,917 | 500,733 |
| Upon Renewal | 58,000,000 | 35,960,000 | 599,333 | 17,740,267 | 599,333 | 17,740,267 |
| Beneficiaries Living Apart | 90,000 | 90,000 | 1,500 | 44,400 | 1,500 | 44,400 |
| Sub-total | 60,120,000 | 36,975,000 | 617,750 | 18,285,400 | 617,750 | 18,285,400 |
| *Uniform Glossary* | 1,102,000 | 1,102,000 | 18,367 | 543,653 | 18,367 | 543,653 |
| *Notice of Modification* | 1,160,000 | 719,200 | 11,987 | 354,805 | 11,987 | 354,805 |
| Total | 62,909,328 | 39,059,864 | 652,498 | 19,313,933 | 652,498 | 19,313,933 |

The Departments note that persons are not required to respond to, and generally are not subject to any penalty for failing to comply with, an ICR unless the ICR has a valid OMB control number. The 2015–2017 paperwork

[64] Based on the 2012 Current Population Survey the Department estimates there are 58.0 million policy holders in ERISA plans *http://www.dol.gov/ebsa/pdf/coveragebulletin2013.pdf* table 2.

burden estimates are summarized as follows:

*Type of Review:*

*Agencies:* Employee Benefits Security Administration, Department of Labor; Internal Revenue Service, U.S. Department of the Treasury.

*Title:* Affordable Care Act Uniform Explanation of Coverage Documents

*OMB Number:* 1210–0147; 1545–2229.

*Affected Public:* Business or other for profit; not-for-profit institutions.

*Total Respondents: 2,389,000.*

*Total Responses: 62,909,000.*

*Frequency of Response:* On-going.

*Estimated Total Annual Burden Hours (three year average):* 399,000 hours (Employee Benefits Security Administration); 399,000 hours (Internal Revenue Service).

*Estimated Total Annual Cost Burden (three year average):* $8,188,000 (Employee Benefits Security Administration); $8,188,000 (Internal Revenue Service).

2. Department of Health and Human Services

The Paperwork Reduction Act (PRA) section for the Departments of Labor and the Treasury above contain the assumptions, data sources, and explanations of the Departments' methodology for estimating the PRA burden. The following tables summarize the Department of Health and Human Services' burden estimates.

TABLE 7—UPDATE SBC INCLUDING COVERAGE EXAMPLES; YEAR 1

| Type of labor | Number of firms | Hours per firm | Cost per hour | Total hour burden | Equivalent costs |
|---|---|---|---|---|---|
| **Issuers** | | | | | |
| Large: | | | | | |
| IT | 75 | 52.3 | $84 | 3,919 | $329,136 |
| Benefits | 75 | 38.0 | 62 | 2,850 | 177,641 |
| Legal | 75 | 4.8 | 130 | 356 | 46,291 |
| Sub-Total | | | | 7,125 | 553,067 |
| Medium: | | | | | |
| IT | 250 | 39.9 | 84 | 9,969 | 837,275 |
| Benefits | 250 | 29.0 | 62 | 7,250 | 451,893 |
| Legal | 250 | 3.6 | 130 | 906 | 117,758 |
| Sub-Total | | | | 18,125 | 1,406,926 |
| Small: | | | | | |
| IT | 175 | 26.1 | 84 | 4,572 | 383,992 |
| Benefits | 175 | 19.0 | 62 | 3,325 | 207,247 |
| Legal | 175 | 2.4 | 130 | 416 | 54,006 |
| Sub-Total | | | | 8,313 | 645,245 |
| **TPAs** | | | | | |
| Large: | | | | | |
| IT | 158 | 15.7 | 84 | 2,477 | 208,014 |
| Benefits | 158 | 11.4 | 62 | 1,801 | 112,269 |
| Legal | 158 | 1.4 | 130 | 225 | 29,256 |
| Sub-Total | | | | 4,503 | 349,539 |
| Medium: | | | | | |
| IT | 526 | 12.0 | 84 | 6,292 | 528,488 |
| Benefits | 526 | 8.7 | 62 | 4,576 | 285,235 |
| Legal | 526 | 1.1 | 130 | 572 | 74,329 |
| Sub-Total | | | | 11,441 | 888,052 |
| Small: | | | | | |
| IT | 368 | 7.8 | 84 | 2,884 | 242,244 |
| Benefits | 368 | 5.7 | 62 | 2,098 | 130,743 |
| Legal | 368 | 0.7 | 130 | 262 | 34,070 |
| Sub-Total | | | | 5,244 | 407,058 |
| Total | | | | 54,750 | 4,249,887 |

TABLE 8—UPDATE SBC INCLUDING COVERAGE EXAMPLES, SUBSEQUENT YEARS

| Type of labor | Number of firms | Hours per firm | Cost per hour | Total hour burden | Equivalent costs |
|---|---|---|---|---|---|
| **Issuers** | | | | | |
| Large: | | | | | |
| IT | 75 | 48.1 | $84 | 3,609 | $303,151 |
| Benefits | 75 | 35.0 | 62 | 2,625 | 163,616 |
| Legal | 75 | 4.4 | 130 | 328 | 42,637 |

TABLE 8—UPDATE SBC INCLUDING COVERAGE EXAMPLES, SUBSEQUENT YEARS—Continued

| Type of labor | Number of firms | Hours per firm | Cost per hour | Total hour burden | Equivalent costs |
|---|---|---|---|---|---|
| Sub-Total | | | | 6,563 | 509,404 |
| Medium: | | | | | |
| IT | 250 | 36.8 | 84 | 9,195 | 772,314 |
| Benefits | 250 | 26.8 | 62 | 6,688 | 416,832 |
| Legal | 250 | 3.3 | 130 | 836 | 108,622 |
| Sub-Total | | | | 16,719 | 1,297,768 |
| Small: | | | | | |
| IT | 175 | 24.1 | 84 | 4,211 | 353,677 |
| Benefits | 175 | 17.5 | 62 | 3,063 | 190,886 |
| Legal | 175 | 2.2 | 130 | 383 | 49,743 |
| Sub-Total | | | | 7,656 | 594,305 |
| **TPAs** | | | | | |
| Large: | | | | | |
| IT | 158 | 14.4 | 84 | 2,281 | 191,592 |
| Benefits | 158 | 10.5 | 62 | 1,659 | 103,405 |
| Legal | 158 | 1.3 | 130 | 207 | 26,946 |
| Sub-Total | | | | 4,148 | 321,943 |
| Medium: | | | | | |
| IT | 526 | 11.0 | 84 | 5,804 | 487,485 |
| Benefits | 526 | 8.0 | 62 | 4,221 | 263,104 |
| Legal | 526 | 1.0 | 130 | 528 | 68,562 |
| Sub-Total | | | | 10,553 | 819,151 |
| Small: | | | | | |
| IT | 368 | 7.2 | 84 | 2,657 | 223,119 |
| Benefits | 368 | 5.3 | 62 | 1,932 | 120,422 |
| Legal | 368 | 0.7 | 130 | 242 | 31,381 |
| Sub-Total | | | | 4,830 | 374,922 |
| Total | | | | 50,468 | 3,917,493 |

TABLE 9—PREPARATION AND DISTRIBUTION COSTS

| | Number of disclosures | Number of disclosures sent on paper | Clerical hour burden | Total equivalent cost |
|---|---|---|---|---|
| *Group Health Plan:* | | | | |
| *SBC with Coverage Examples* | 15,750 | 7,875 | 131.25 | $3,885 |
| *SBC with Coverage Examples—Participants and Beneficiaries:* | | | | |
| Upon Application or Eligibility | 222,680 | 111,340 | 1,855.67 | 54,928 |
| Upon Renewal | 17,129,262 | 8,564,631 | 142,743.85 | 4,225,218 |
| Beneficiaries Living Apart | 33,000 | 33,000 | 550.00 | 16,280 |
| Sub-Total | 17,384,942 | 8,708,971 | 145,150 | 4,296,426 |
| Uniform Glossary | 428,232 | 428,232 | 7,137 | 211,261 |
| Notice of Modification | 342,585 | 171,293 | 2,855 | 84,504 |
| *Individual Market:* | | | | |
| *SBC with Coverage Examples* | 21,784,217 | 6,535,265 | 108,921 | 3,224,064 |
| *Uniform Glossary* | 762,448 | 762,448 | 12,707 | 376,141 |
| *Notice of Modification* | 435,684.34 | 130,705 | 2,178 | 64,481 |
| Total | 41,153,858 | 16,744,788 | 279,080 | 8,260,762 |

TABLE 10—PREPARATION AND DISTRIBUTION COSTS

| | Number of disclosures | Number of disclosures sent on paper | Material and printing costs | Postage costs | Total cost burden |
|---|---|---|---|---|---|
| *Group Health Plan:* | | | | | |
| *SBC with Coverage Examples* | 15,750 | 7,875 | $3,150 | | $3,150 |
| *SBC with Coverage Examples—Participants and Beneficiaries:* | | | | | |

TABLE 10—PREPARATION AND DISTRIBUTION COSTS—Continued

| | Number of disclosures | Number of disclosures sent on paper | Material and printing costs | Postage costs | Total cost burden |
|---|---|---|---|---|---|
| Upon Application or Eligibility | 222,680 | 111,340 | 44,536 | | 44,536 |
| Upon Renewal | 17,129,262 | 8,564,631 | 3,425,852 | | 3,425,852 |
| Beneficiaries Living Apart | 33,000 | 33,000 | 13,200 | $16,170 | 29,370 |
| Sub-Total | 17,384,942 | 8,708,971 | 3,483,588 | 16,170 | 3,499,758 |
| Uniform Glossary | 428,232 | 428,232 | 85,646 | 209,833 | 295,480 |
| Notice of Modification | 342,585 | 171,293 | 68,517 | 83,933 | 152,450 |
| *Individual Market:* | | | | | |
| *SBC with Coverage Examples* | 21,784,217 | 6,535,265 | 2,614,106 | | 2,614,106 |
| *Uniform Glossary* | 762,448 | 762,448 | 152,490 | 373,599 | 526,089 |
| *Notice of Modification* | 435,684.34 | 130,705 | 52,282 | 64,046 | 116,328 |
| Total | 41,153,858 | 16,744,788 | 6,459,780 | 747,582 | 7,207,361 |

HHS is proposing that issuers be required to make available on an Internet web address a copy of the actual individual coverage policy or group certificate of coverage.[65] HHS estimates that the burden of this request will be de minimis because the documents will have already been created and issuers already have web addresses on which the materials can be made available.

The Department notes that persons are not required to respond to, and generally are not subject to any penalty for failing to comply with, an ICR unless the ICR has a valid OMB control number.

The 2015–2017 paperwork burden estimates are summarized as follows:

*Type of Review: Revision.*

*Agency:* Department of Health and Human Services.

*Title:* Summary of benefits and Coverage Uniform Glossary

*CMS Identifier (OMB Control Number):* CMS–10407 (0938–1146).

*Affected Public:* State, Local, or Tribal Governments.

*Total Respondents: 126,500.*

*Total Responses: 41,154,000.*

*Frequency of Response:* On-going.

*Estimated Total Annual Burden Hours (three year average): 331,000 hours.*

*Estimated Total Annual Cost Burden (three year average): $7,207,000.*

ICRs Related to Deemed Compliance Reporting (45 CFR 147.200(a)(4)(iii)(C))

Under 45 CFR 147.200(a)(4)(iii)(C), if individual health insurance issuers provide the content required for the SBC to the federal health reform Web portal described in 45 CFR 159.120 (HealthCare.gov), then they will be deemed to have satisfied the requirement to provide an SBC to individuals who request information about coverage prior to submitting an application for coverage. Individual health insurance issuers already provide most SBC content elements to HealthCare.gov, except for five data elements related to patient responsibility for each coverage example: Deductibles, co-payments, co-insurance, coverage limits or exclusions, and the total out-of-pocket cost to the enrollee in view of these cost-sharing amounts and coverage limits or exclusions.

Accordingly, the additional burden associated with the requirements under § 147.200(a)(4)(iii)(C) is the time and effort it would take each of the 320 issuers submitting this data in the individual market to enter the five additional data elements into an Excel spreadsheet. We estimate that it will take these issuers about 160 hours, at a total estimated cost of about $4,800, for each coverage example. For three coverage examples, the burden and cost would be about 480 hours at a cost of about $14,400.

In deriving these figures, we used the following hourly labor rates and estimated the time to complete each task: $ 30.78/hr. and 0.5 hr./issuer for clerical staff to enter data into an Excel spreadsheet, or about $15 per respondent per coverage example.

This information collection requirement reflects the requirement that issuers must provide all content required in the SBC, including the information necessary for coverage examples, to HealthCare.gov to be deemed compliant. The aforementioned burden estimates will be submitted for OMB review and approval as a revision to the information collection request currently approved under OMB control number 0938–1086.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.gov/PaperworkReductionActof1995/PRAL/list.asp#TopOfPage* or email your request, including your address, phone number, OMB control number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless the head of an agency certifies that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis (IRFA) describing the rule's impact on small entities and explaining how the agency made its decisions with respect to the application of the rule to small entities.

The RFA generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*), (2) a nonprofit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. (States and individuals are not included in the definition of ''small entity.'')

There are several different types of small entities affected by these proposed regulations. For issuers and TPAs, the Departments use as their measure of significant economic impact on a

[65] See proposed 45 CFR 147.200(a)(2)(i)(J).

substantial number of small entities a change in revenues of more than 3 to 5 percent. For plans, the Departments continue to consider a small plan to be an employee benefit plan with fewer than 100 participants.[66] Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, the Departments believe that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). The Departments therefore request comments on the appropriateness of the size standard used in evaluating the impact of these proposed regulations on small entities.

The Departments carefully considered the likely impact of the rule on small entities in connection with their assessment under Executive Order 12866. The Departments believe that the proposed regulations include flexibility like allowing use of the Coverage Example Calculator that would minimize the burden on small entities. Also, the Departments believe that the burden imposed by the proposed regulation on small insurers and small TPAs will be 20 hours or less annually.

The Departments hereby certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities, as described above. Consistent with the policy of the RFA, the Departments encourage the public to submit comments that would allow the Departments to assess the impacts specifically on small entities or suggest alternative rules that accomplish the stated purpose of PHS Act section 2715 and minimize the impact on small entities.

*D. Unfunded Mandates Reform Act—Department of Labor and Department of Health and Human Services*

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995 requires that agencies assess anticipated costs and benefits before issuing any proposed rule that includes a Federal mandate that could result in expenditure in any one year by State, local or Tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars updated annually for inflation. In 2014, that threshold level is approximately $141 million. These proposed regulations include no mandates on State, local, or Tribal governments. These proposed regulations propose requirements regarding standardized consumer disclosures that would affect private sector firms (for example, health insurance issuers offering coverage in the individual and group markets, and third-party administrators providing administrative services to group health plans), but we conclude that these costs would not exceed the $141 million threshold. Thus, the Departments of Labor and HHS conclude that these proposed regulations would not impose an unfunded mandate on State, local or Tribal governments or the private sector. Regardless, consistent with policy embodied in UMRA, the proposed requirements described in this notice of proposed rulemaking has been designed to be the least burdensome alternative for State, local and Tribal governments, and the private sector while achieving the objectives of the Affordable Care Act.

*E. Federalism Statement—Department of Labor and Department of Health and Human Services*

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have ''substantial direct effects'' on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the regulation.

In the Departments of Labor's and HHS' view, these proposed rules have federalism implications because they would have direct effects on the States, the relationship between national governments and States, or on the distribution of power and responsibilities among various levels of government relating to the disclosure of health insurance coverage information to consumers. Under these proposed rules, all group health plans and health insurance issuers offering group or individual health insurance coverage, including self-funded non-federal governmental plans as defined in section 2791 of the PHS Act, would be required to follow uniform standards for compiling and providing a summary of benefits and coverage to consumers. Such Federal standards developed under PHS Act section 2715(a) would preempt any related State standards that require a summary of benefits and coverage that provides less information to consumers than that required to be provided under PHS Act section 2715(a).

In general, through section 514, ERISA supersedes State laws to the extent that they relate to any covered employee benefit plan, and preserves State laws that regulate insurance, banking, or securities. While ERISA prohibits States from regulating a plan as an insurance or investment company or bank, the preemption provisions of section 731 of ERISA and section 2724 of the PHS Act (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the HIPAA requirements (including those of the Affordable Care Act) are not to be ''construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement'' of a Federal standard. The conference report accompanying HIPAA indicates that this is intended to be the ''narrowest'' preemption of State laws (See House Conf. Rep. No. 104–736, at 205, reprinted in 1996 U.S. Code Cong. & Admin. News 2018).

States may continue to apply State law requirements except to the extent that such requirements prevent the application of the Affordable Care Act requirements that are the subject of this rulemaking. Accordingly, States have significant latitude to impose requirements on health insurance issuers that are more restrictive than the Federal law. However, under these proposed rules, a State would not be allowed to impose a requirement that modifies the summary of benefits and coverage required to be provided under PHS Act section 2715(a), because it would prevent the application of this proposed rule's uniform disclosure requirement.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the States, the Departments of Labor and HHS have engaged in efforts to consult

[66] The basis for this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

with and work cooperatively with affected States, including consulting with, and attending conferences of, the National Association of Insurance Commissioners and consulting with State insurance officials on an individual basis. It is expected that the Departments of Labor and HHS will act in a similar fashion in enforcing the Affordable Care Act, including the provisions of section 2715 of the PHS Act. Throughout the process of developing these proposed regulations, to the extent feasible within the specific preemption provisions of HIPAA as it applies to the Affordable Care Act, the Departments of Labor and HHS have attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to provide uniform minimum protections to consumers in every State. By doing so, it is the Departments of Labor's and HHS ' view that they have complied with the requirements of Executive Order 13132.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this proposed rule, the Departments certify that the Employee Benefits Security Administration and the Centers for Medicare & Medicaid Services have complied with the requirements of Executive Order 13132 for the attached proposed rule in a meaningful and timely manner.

*F. Special Analyses—Department of the Treasury*

For purposes of the Department of the Treasury it has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations. For a discussion of the impact of this proposed rule on small entities, please see section V.C. of this preamble. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Small Business Administration for comment on its impact on small business.

*G. Congressional Review Act*

This proposed rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), which specifies that before a rule can take effect, the Federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information, and has been transmitted to Congress and the Comptroller General for review.

## VII. Statutory Authority

The Department of the Treasury regulations are proposed to be adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor regulations are proposed to be adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Public Law 104–191, 110 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Public Law 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Public Law 111–148, 124 Stat. 119, as amended by Public Law 111–152, 124 Stat. 1029; Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012).

The Department of Health and Human Services regulations are proposed to be adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

## List of Subjects

*26 CFR Part 54*

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

*29 CFR Part 2590*

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

*45 CFR Part 147*

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

Signed this 19th day of December, 2014.

**John M. Dalrymple,**

*Deputy Commissioner for Services and Enforcement, Internal Revenue Service.*

Signed this 18th day of December, 2014.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration, Department of Labor. CMS–9938–P*

Dated: December 18, 2014.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: December 19, 2014.

**Sylvia Burwell,**

*Secretary, Department of Health and Human Services.*

## Department of the Treasury

*Internal Revenue Service*

**26 CFR Chapter 1**

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

## PART 54—PENSION EXCISE TAXES

■ **Paragraph 1.** The authority citation for Part 54 continues to read in part as follows:

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

* * *

Section 54.9815–2715 also issued under 26 U.S.C. 9833.

■ **Paragraph 2.** Section 54.9815–2715 is revised to read as follows:

**§ 54.9815–2715 Summary of benefits and coverage and uniform glossary.**

(a) *Summary of benefits and coverage*—(1) *In general.* A group health plan (and its administrator as defined in section 3(16)(A) of the Employee Retirement Income Security Act of 1974 (ERISA)), and a health insurance issuer offering group health insurance coverage, is required to provide a written summary of benefits and coverage (SBC) for each benefit package without charge to entities and individuals described in this paragraph (a)(1) in accordance with the rules of this section.

(i) *SBC provided by a group health insurance issuer to a group health plan*—(A) *Upon application.* A health insurance issuer offering group health insurance coverage must provide the SBC to a group health plan (or its sponsor) upon application for health coverage, as soon as practicable following receipt of the application, but in no event later than seven business days following receipt of the application. If an SBC was provided before application pursuant to paragraph (a)(1)(i)(D) of this section (relating to SBCs upon request), this paragraph (a)(1)(i)(A) is deemed

satisfied, provided there is no change to the information required to be in the SBC. However, if there has been a change in the information required, a new SBC that includes the correct information must be provided upon application pursuant to this paragraph (a)(1)(i)(A).

(B) *By first day of coverage (if there are changes).* If there is any change in the information required to be in the SBC that was provided upon application and before the first day of coverage, the issuer must update and provide a current SBC to the plan (or its sponsor) no later than the first day of coverage.

(C) *Upon renewal, reissuance, or re-enrollment.* If the issuer renews or reissues a policy, certificate, or contract of insurance for a succeeding policy year, or automatically re-enrolls the policyholder or its participants and beneficiaries in coverage, the issuer must provide a new SBC as follows:

(*1*) If written application is required (in either paper or electronic form) for renewal or reissuance, the SBC must be provided no later than the date the written application materials are distributed.

(*2*) If renewal, reissuance, or re-enrollment is automatic, the SBC must be provided no later than 30 days prior to the first day of the new plan or policy year; however, with respect to an insured plan, if the policy, certificate, or contract of insurance has not been issued or renewed before such 30-day period, the SBC must be provided as soon as practicable but in no event later than seven business days after issuance of the new policy, certificate, or contract of insurance, or the receipt of written confirmation of intent to renew, whichever is earlier.

(D) *Upon request.* If a group health plan (or its sponsor) requests an SBC or summary information about a health insurance product from a health insurance issuer offering group health insurance coverage, an SBC must be provided as soon as practicable, but in no event later than seven business days following receipt of the request.

(ii) *SBC provided by a group health insurance issuer and a group health plan to participants and beneficiaries*—(A) *In general.* A group health plan (including its administrator, as defined under section 3(16) of ERISA), and a health insurance issuer offering group health insurance coverage, must provide an SBC to a participant or beneficiary (as defined under sections 3(7) and 3(8) of ERISA), and consistent with the rules of paragraph (a)(1)(iii) of this section, with respect to each benefit package offered by the plan or issuer for which the participant or beneficiary is eligible.

(B) *Upon application.* The SBC must be provided as part of any written application materials that are distributed by the plan or issuer for enrollment. If the plan or issuer does not distribute written application materials for enrollment, the SBC must be provided no later than the first date on which the participant is eligible to enroll in coverage for the participant or any beneficiaries. If an SBC was provided before application pursuant to paragraph (a)(1)(ii)(F) of this section (relating to SBCs upon request), this paragraph (a)(1)(ii)(B) is deemed satisfied, provided there is no change to the information required to be in the SBC. However, if there has been is a change in the information content, a new SBC that includes the correct information must be provided upon application pursuant to this paragraph (a)(1)(ii)(B).

(C) *By first day of coverage (if there are changes).* If there is any change to the information required to be in the SBC that was provided upon application and before the first day of coverage, the plan or issuer must update and provide a current SBC to a participant or beneficiary no later than the first day of coverage.

(D) *Special enrollees.* The plan or issuer must provide the SBC to special enrollees (as described in § 54.9801–6) no later than the date by which a summary plan description is required to be provided under the timeframe set forth in ERISA section 104(b)(1)(A) and its implementing regulations, which is 90 days from enrollment.

(E) *Upon renewal, reissuance, or re-enrollment.* If the plan or issuer requires participants or beneficiaries to renew in order to maintain coverage (for example, for a succeeding plan year), or automatically re-enrolls participants and beneficiaries in coverage, the plan or issuer must provide a new SBC, as follows:

(*1*) If written application is required for renewal, reissuance, or re-enrollment (in either paper or electronic form), the SBC must be provided no later than the date on which the written application materials are distributed.

(*2*) If renewal, reissuance, or re-enrollment is automatic, the SBC must be provided no later than 30 days prior to the first day of the new plan or policy year; however, with respect to an insured plan, if the policy, certificate, or contract of insurance has not been issued or renewed before such 30-day period, the SBC must be provided as soon as practicable but in no event later than seven business days after issuance of the new policy, certificate, or contract of insurance, or the receipt of written confirmation of intent to renew, whichever is earlier.

(F) *Upon request.* A plan or issuer must provide the SBC to participants or beneficiaries upon request for an SBC or summary information about the health coverage, as soon as practicable, but in no event later than seven business days following receipt of the request.

(iii) *Special rules to prevent unnecessary duplication with respect to group health coverage*—(A) An entity required to provide an SBC under this paragraph (a)(1) with respect to an individual satisfies that requirement if another party provides the SBC, but only to the extent that the SBC is timely and complete in accordance with the other rules of this section. Therefore, for example, in the case of a group health plan funded through an insurance policy, the plan satisfies the requirement to provide an SBC with respect to an individual if the issuer provides a timely and complete SBC to the individual. An entity required to provide an SBC under this paragraph (a)(1) with respect to an individual that contracts with another party to provide such SBC is considered to satisfy the requirement to provide such SBC if:

(*1*) The entity monitors performance under the contract;

(*2*) If the entity has knowledge that the SBC is not being provided in a manner that satisfies the requirements of this section and the entity has all information necessary to correct the noncompliance, the entity corrects the noncompliance as soon as practicable; and

(*3*) If the entity has knowledge the SBC is not being provided in a manner that satisfies the requirements of this section and the entity does not have all information necessary to correct the noncompliance, the entity communicates with participants and beneficiaries who are affected by the noncompliance regarding the regarding the noncompliance, and begins taking significant steps as soon as practicable to avoid future violations.

(B) If a single SBC is provided to a participant and any beneficiaries at the participant's last known address, then the requirement to provide the SBC to the participant and any beneficiaries is generally satisfied. However, if a beneficiary's last known address is different than the participant's last known address, a separate SBC is required to be provided to the beneficiary at the beneficiary's last known address.

(C) With respect to a group health plan that offers multiple benefit packages, the plan or issuer is required to provide a new SBC automatically to

participants and beneficiaries upon renewal or re-enrollment only with respect to the benefit package in which a participant or beneficiary is enrolled (or will be automatically re-enrolled under the plan); SBCs are not required to be provided automatically upon renewal or re-enrollment with respect to benefit packages in which the participant or beneficiary is not enrolled (or will not automatically be enrolled). However, if a participant or beneficiary requests an SBC with respect to another benefit package (or more than one other benefit package) for which the participant or beneficiary is eligible, the SBC (or SBCs, in the case of a request for SBCs relating to more than one benefit package) must be provided upon request as soon as practicable, but in no event later than seven business days following receipt of the request.

(2) *Content*—(i) *In general.* Subject to paragraph (a)(2)(iii) of this section, the SBC must include the following:

(A) Uniform definitions of standard insurance terms and medical terms so that consumers may compare health coverage and understand the terms of (or exceptions to) their coverage, in accordance with guidance as specified by the Secretary;

(B) A description of the coverage, including cost sharing, for each category of benefits identified by the Secretary in guidance;

(C) The exceptions, reductions, and limitations of the coverage;

(D) The cost-sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations;

(E) The renewability and continuation of coverage provisions;

(F) Coverage examples, in accordance with the rules of paragraph (a)(2)(ii) of this section;

(G) With respect to coverage beginning on or after January 1, 2014, a statement about whether the plan or coverage provides minimum essential coverage as defined under section 5000A(f) and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage meets applicable requirements;

(H) A statement that the SBC is only a summary and that the plan document, policy, certificate, or contract of insurance should be consulted to determine the governing contractual provisions of the coverage;

(I) Contact information for questions;

(J) For issuers, an Internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained;

(K) For plans and issuers that maintain one or more networks of providers, an Internet address (or similar contact information) for obtaining a list of network providers;

(L) For plans and issuers that use a formulary in providing prescription drug coverage, an Internet address (or similar contact information) for obtaining information on prescription drug coverage; and

(M) An Internet address for obtaining the uniform glossary, as described in paragraph (c) of this section, as well as a contact phone number to obtain a paper copy of the uniform glossary, and a disclosure that paper copies are available.

(ii) *Coverage examples.* The SBC must include coverage examples specified by the Secretary in guidance that illustrate benefits provided under the plan or coverage for common benefits scenarios (including pregnancy and serious or chronic medical conditions) in accordance with this paragraph (a)(2)(ii).

(A) *Number of examples.* The Secretary may identify up to six coverage examples that may be required in an SBC.

(B) *Benefits scenarios.* For purposes of this paragraph (a)(2)(ii), a benefits scenario is a hypothetical situation, consisting of a sample treatment plan for a specified medical condition during a specific period of time, based on recognized clinical practice guidelines as defined by the National Guideline Clearinghouse, Agency for Healthcare Research and Quality. The Secretary will specify, in guidance, the assumptions, including the relevant items and services and reimbursement information, for each claim in the benefits scenario.

(C) *Illustration of benefit provided.* For purposes of this paragraph (a)(2)(ii), to illustrate benefits provided under the plan or coverage for a particular benefits scenario, a plan or issuer simulates claims processing in accordance with guidance issued by the Secretary to generate an estimate of what an individual might expect to pay under the plan, policy, or benefit package. The illustration of benefits provided will take into account any cost sharing, excluded benefits, and other limitations on coverage, as specified by the Secretary in guidance.

(iii) *Coverage provided outside the United States.* In lieu of summarizing coverage for items and services provided outside the United States, a plan or issuer may provide an Internet address (or similar contact information) for obtaining information about benefits and coverage provided outside the United States. In any case, the plan or issuer must provide an SBC in accordance with this section that accurately summarizes benefits and coverage available under the plan or coverage within the United States.

(3) *Appearance.* (i) A group health plan and a health insurance issuer must provide an SBC in the form, and in accordance with the instructions for completing the SBC, that are specified by the Secretary in guidance. The SBC must be presented in a uniform format, use terminology understandable by the average plan enrollee, not exceed four double-sided pages in length, and not include print smaller than 12-point font.

(ii) A group health plan that utilizes two or more benefit packages (such as major medical coverage and a health flexible spending arrangement) may synthesize the information into a single SBC, or provide multiple SBCs.

(4) *Form*—(i) An SBC provided by an issuer offering group health insurance coverage to a plan (or its sponsor), may be provided in paper form. Alternatively, the SBC may be provided electronically (such as by email or an Internet posting) if the following three conditions are satisfied—

(A) The format is readily accessible by the plan (or its sponsor);

(B) The SBC is provided in paper form free of charge upon request; and

(C) If the electronic form is an Internet posting, the issuer timely advises the plan (or its sponsor) in paper form or email that the documents are available on the Internet and provides the Internet address.

(ii) An SBC provided by a group health plan or health insurance issuer to a participant or beneficiary may be provided in paper form. Alternatively, the SBC may be provided electronically (such as by email or an Internet posting) if the requirements of this paragraph (a)(4)(ii) are met.

(A) With respect to participants and beneficiaries covered under the plan, the SBC may be provided electronically as described in this paragraph (a)(4)(ii)(A). However, in all cases, the plan must provide the SBC in paper form if paper form is requested.

(*1*) In accordance with the Department of Labor's disclosure regulations at 29 CFR 2520.104b–1;

(*2*) In connection with online enrollment or online renewal of coverage under the plan; or

(*3*) In response to an online request made by a participant or beneficiary for the SBC.

(B) With respect to participants and beneficiaries who are eligible but not enrolled for coverage, the SBC may be provided electronically if:

(*1*) The format is readily accessible;

(*2*) The SBC is provided in paper form free of charge upon request; and

(*3*) In a case in which the electronic form is an Internet posting, the plan or issuer timely notifies the individual in paper form (such as a postcard) or email that the documents are available on the Internet, provides the Internet address, and notifies the individual that the documents are available in paper form upon request.

(5) *Language.* A group health plan or health insurance issuer must provide the SBC in a culturally and linguistically appropriate manner. For purposes of this paragraph (a)(5), a plan or issuer is considered to provide the SBC in a culturally and linguistically appropriate manner if the thresholds and standards of 29 CFR 2590.715–2719(e) are met as applied to the SBC.

(b) *Notice of modification.* If a group health plan, or health insurance issuer offering group health insurance coverage, makes any material modification (as defined under section 102 of ERISA) in any of the terms of the plan or coverage that would affect the content of the SBC, that is not reflected in the most recently provided SBC, and that occurs other than in connection with a renewal or reissuance of coverage, the plan or issuer must provide notice of the modification to enrollees not later than 60 days prior to the date on which the modification will become effective. The notice of modification must be provided in a form that is consistent with the rules of paragraph (a)(4) of this section.

(c) *Uniform glossary*—(1) *In general.* A group health plan, and a health insurance issuer offering group health insurance coverage, must make available to participants and beneficiaries the uniform glossary described in paragraph (c)(2) of this section in accordance with the appearance and form and manner requirements of paragraphs (c)(3) and (c)(4) of this section.

(2) *Health-coverage-related terms and medical terms.* The uniform glossary must provide uniform definitions, specified by the Secretary in guidance, of the following health-coverage-related terms and medical terms:

(i) Allowed amount, appeal, balance billing, co-insurance, complications of pregnancy, co-payment, deductible, durable medical equipment, emergency medical condition, emergency medical transportation, emergency room care, emergency services, excluded services, grievance, habilitation services, health insurance, home health care, hospice services, hospitalization, hospital outpatient care, in-network co-insurance, in-network co-payment, medically necessary, network, non-preferred provider, out-of-network co-insurance, out-of-network co-payment, out-of-pocket limit, physician services, plan, preauthorization, preferred provider, premium, prescription drug coverage, prescription drugs, primary care physician, primary care provider, provider, reconstructive surgery, rehabilitation services, skilled nursing care, specialist, usual customary and reasonable (UCR), and urgent care; and

(ii) Such other terms as the Secretary determines are important to define so that individuals and employers may compare and understand the terms of coverage and medical benefits (including any exceptions to those benefits), as specified in guidance.

(3) *Appearance.* A group health plan, and a health insurance issuer, must provide the uniform glossary with the appearance specified by the Secretary in guidance to ensure the uniform glossary is presented in a uniform format and uses terminology understandable by the average plan enrollee.

(4) *Form and manner.* A plan or issuer must make the uniform glossary described in this paragraph (c) available upon request, in either paper or electronic form (as requested), within seven business days after receipt of the request.

(d) *Preemption.* State laws that require a health insurance issuer to provide an SBC that supplies less information than required under paragraph (a) of this section are preempted.

(e) *Failure to provide.* A group health plan that willfully fails to provide information required under this section to a participant or beneficiary is subject to a fine of not more than $1,000 for each such failure. A failure with respect to each participant or beneficiary constitutes a separate offense for purposes of this paragraph (e). The IRS will enforce this section using a process and procedure consistent with section 4980D of the Code.

(f) *Applicability.* The requirements of this section do not apply to a group health plan benefit package that provides Medicare Advantage benefits pursuant to or 42 U.S.C. Chapter 7, Subchapter XVIII, Part C.

**Department of Labor**

*Employee Benefits Security Administration*

**29 CFR Chapter XXV**

Accordingly, 29 CFR part 2590 is proposed to be amended as follows:

## PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 1. The authority citation for Part 2590 continues to read as follows:

**Authority:** 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012).

■ 2. Section 2590.715–2715 is revised to read as follows:

### § 2590.715–2715 Summary of benefits and coverage and uniform glossary.

(a) *Summary of benefits and coverage*—(1) *In general.* A group health plan (and its administrator as defined in section 3(16)(A) of ERISA)), and a health insurance issuer offering group health insurance coverage, is required to provide a written summary of benefits and coverage (SBC) for each benefit package without charge to entities and individuals described in this paragraph (a)(1) in accordance with the rules of this section.

(i) *SBC provided by a group health insurance issuer to a group health plan*—(A) *Upon application.* A health insurance issuer offering group health insurance coverage must provide the SBC to a group health plan (or its sponsor) upon application for health coverage, as soon as practicable following receipt of the application, but in no event later than seven business days following receipt of the application. If an SBC was provided before application pursuant to paragraph (a)(1)(i)(D) of this section (relating to SBCs upon request), this paragraph (a)(1)(i)(A) is deemed satisfied, provided there is no change to the information required to be in the SBC. However, if there has been a change in the information required, a new SBC that includes the correct information must be provided upon application pursuant to this paragraph (a)(1)(i)(A).

(B) *By first day of coverage (if there are changes).* If there is any change in the information required to be in the SBC that was provided upon application and before the first day of coverage, the issuer must update and provide a current SBC to the plan (or its sponsor) no later than the first day of coverage.

(C) *Upon renewal, reissuance, or re-enrollment.* If the issuer renews or reissues a policy, certificate, or contract of insurance for a succeeding policy

year, or automatically re-enrolls the policyholder or its participants and beneficiaries in coverage, the issuer must provide a new SBC as follows:

(*1*) If written application is required (in either paper or electronic form) for renewal or reissuance, the SBC must be provided no later than the date the written application materials are distributed.

(*2*) If renewal, reissuance, or re-enrollment is automatic, the SBC must be provided no later than 30 days prior to the first day of the new plan or policy year; however, with respect to an insured plan, if the policy, certificate, or contract of insurance has not been issued or renewed before such 30-day period, the SBC must be provided as soon as practicable but in no event later than seven business days after issuance of the new policy, certificate, or contract of insurance, or the receipt of written confirmation of intent to renew, whichever is earlier.

(D) *Upon request.* If a group health plan (or its sponsor) requests an SBC or summary information about a health insurance product from a health insurance issuer offering group health insurance coverage, an SBC must be provided as soon as practicable, but in no event later than seven business days following receipt of the request.

(ii) *SBC provided by a group health insurance issuer and a group health plan to participants and beneficiaries*—(A) *In general.* A group health plan (including its administrator, as defined under section 3(16) of ERISA), and a health insurance issuer offering group health insurance coverage, must provide an SBC to a participant or beneficiary (as defined under sections 3(7) and 3(8) of ERISA), and consistent with the rules of paragraph (a)(1)(iii) of this section, with respect to each benefit package offered by the plan or issuer for which the participant or beneficiary is eligible.

(B) *Upon application.* The SBC must be provided as part of any written application materials that are distributed by the plan or issuer for enrollment. If the plan or issuer does not distribute written application materials for enrollment, the SBC must be provided no later than the first date on which the participant is eligible to enroll in coverage for the participant or any beneficiaries. If an SBC was provided before application pursuant to paragraph (a)(1)(ii)(F) of this section (relating to SBCs upon request), this paragraph (a)(1)(ii)(B) is deemed satisfied, provided there is no change to the information required to be in the SBC. However, if there has been is a change in the information content, a new SBC that includes the correct information must be provided upon application pursuant to this paragraph (a)(1)(ii)(B).

(C) *By first day of coverage (if there are changes).* If there is any change to the information required to be in the SBC that was provided upon application and before the first day of coverage, the plan or issuer must update and provide a current SBC to a participant or beneficiary no later than the first day of coverage.

(D) *Special enrollees.* The plan or issuer must provide the SBC to special enrollees (as described in § 2590.701–6) no later than the date by which a summary plan description is required to be provided under the timeframe set forth in ERISA section 104(b)(1)(A) and its implementing regulations, which is 90 days from enrollment.

(E) *Upon renewal, reissuance, or re-enrollment.* If the plan or issuer requires participants or beneficiaries to renew in order to maintain coverage (for example, for a succeeding plan year), or automatically re-enrolls participants and beneficiaries in coverage, the plan or issuer must provide a new SBC, as follows:

(*1*) If written application is required for renewal, reissuance, or re-enrollment (in either paper or electronic form), the SBC must be provided no later than the date on which the written application materials are distributed.

(*2*) If renewal, reissuance, or re-enrollment is automatic, the SBC must be provided no later than 30 days prior to the first day of the new plan or policy year; however, with respect to an insured plan, if the policy, certificate, or contract of insurance has not been issued or renewed before such 30-day period, the SBC must be provided as soon as practicable but in no event later than seven business days after issuance of the new policy, certificate, or contract of insurance, or the receipt of written confirmation of intent to renew, whichever is earlier.

(F) *Upon request.* A plan or issuer must provide the SBC to participants or beneficiaries upon request for an SBC or summary information about the health coverage, as soon as practicable, but in no event later than seven business days following receipt of the request.

(iii) *Special rules to prevent unnecessary duplication with respect to group health coverage*—(A) An entity required to provide an SBC under this paragraph (a)(1) with respect to an individual satisfies that requirement if another party provides the SBC, but only to the extent that the SBC is timely and complete in accordance with the other rules of this section. Therefore, for example, in the case of a group health plan funded through an insurance policy, the plan satisfies the requirement to provide an SBC with respect to an individual if the issuer provides a timely and complete SBC to the individual. An entity required to provide an SBC under this paragraph (a)(1) with respect to an individual that contracts with another party to provide such SBC is considered to satisfy the requirement to provide such SBC if:

(*1*) The entity monitors performance under the contract;

(*2*) If the entity has knowledge that the SBC is not being provided in a manner that satisfies the requirements of this section and the entity has all information necessary to correct the noncompliance, the entity corrects the noncompliance as soon as practicable; and

(*3*) If the entity has knowledge the SBC is not being provided in a manner that satisfies the requirements of this section and the entity does not have all information necessary to correct the noncompliance, the entity communicates with participants and beneficiaries who are affected by the noncompliance regarding the regarding the noncompliance, and begins taking significant steps as soon as practicable to avoid future violations.

(B) If a single SBC is provided to a participant and any beneficiaries at the participant's last known address, then the requirement to provide the SBC to the participant and any beneficiaries is generally satisfied. However, if a beneficiary's last known address is different than the participant's last known address, a separate SBC is required to be provided to the beneficiary at the beneficiary's last known address.

(C) With respect to a group health plan that offers multiple benefit packages, the plan or issuer is required to provide a new SBC automatically to participants and beneficiaries upon renewal or re-enrollment only with respect to the benefit package in which a participant or beneficiary is enrolled (or will be automatically re-enrolled under the plan); SBCs are not required to be provided automatically upon renewal or re-enrollment with respect to benefit packages in which the participant or beneficiary is not enrolled (or will not automatically be enrolled). However, if a participant or beneficiary requests an SBC with respect to another benefit package (or more than one other benefit package) for which the participant or beneficiary is eligible, the SBC (or SBCs, in the case of a request for SBCs relating to more than one benefit package) must be provided upon request as soon as practicable, but in no

event later than seven business days following receipt of the request.

(2) *Content*—(i) *In general.* Subject to paragraph (a)(2)(iii) of this section, the SBC must include the following:

(A) Uniform definitions of standard insurance terms and medical terms so that consumers may compare health coverage and understand the terms of (or exceptions to) their coverage, in accordance with guidance as specified by the Secretary;

(B) A description of the coverage, including cost sharing, for each category of benefits identified by the Secretary in guidance;

(C) The exceptions, reductions, and limitations of the coverage;

(D) The cost-sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations;

(E) The renewability and continuation of coverage provisions;

(F) Coverage examples, in accordance with the rules of paragraph (a)(2)(ii) of this section;

(G) With respect to coverage beginning on or after January 1, 2014, a statement about whether the plan or coverage provides minimum essential coverage as defined under section 5000A(f) and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage meets applicable requirements;

(H) A statement that the SBC is only a summary and that the plan document, policy, certificate, or contract of insurance should be consulted to determine the governing contractual provisions of the coverage;

(I) Contact information for questions;

(J) For issuers, an Internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained;

(K) For plans and issuers that maintain one or more networks of providers, an Internet address (or similar contact information) for obtaining a list of network providers;

(L) For plans and issuers that use a formulary in providing prescription drug coverage, an Internet address (or similar contact information) for obtaining information on prescription drug coverage; and

(M) An Internet address for obtaining the uniform glossary, as described in paragraph (c) of this section, as well as a contact phone number to obtain a paper copy of the uniform glossary, and a disclosure that paper copies are available.

(ii) *Coverage examples.* The SBC must include coverage examples specified by the Secretary in guidance that illustrate benefits provided under the plan or coverage for common benefits scenarios (including pregnancy and serious or chronic medical conditions) in accordance with this paragraph (a)(2)(ii).

(A) *Number of examples.* The Secretary may identify up to six coverage examples that may be required in an SBC.

(B) *Benefits scenarios.* For purposes of this paragraph (a)(2)(ii), a benefits scenario is a hypothetical situation, consisting of a sample treatment plan for a specified medical condition during a specific period of time, based on recognized clinical practice guidelines as defined by the National Guideline Clearinghouse, Agency for Healthcare Research and Quality. The Secretary will specify, in guidance, the assumptions, including the relevant items and services and reimbursement information, for each claim in the benefits scenario.

(C) *Illustration of benefit provided.* For purposes of this paragraph (a)(2)(ii), to illustrate benefits provided under the plan or coverage for a particular benefits scenario, a plan or issuer simulates claims processing in accordance with guidance issued by the Secretary to generate an estimate of what an individual might expect to pay under the plan, policy, or benefit package. The illustration of benefits provided will take into account any cost sharing, excluded benefits, and other limitations on coverage, as specified by the Secretary in guidance.

(iii) *Coverage provided outside the United States.* In lieu of summarizing coverage for items and services provided outside the United States, a plan or issuer may provide an Internet address (or similar contact information) for obtaining information about benefits and coverage provided outside the United States. In any case, the plan or issuer must provide an SBC in accordance with this section that accurately summarizes benefits and coverage available under the plan or coverage within the United States.

(3) *Appearance.* (i) A group health plan and a health insurance issuer must provide an SBC in the form, and in accordance with the instructions for completing the SBC, that are specified by the Secretary in guidance. The SBC must be presented in a uniform format, use terminology understandable by the average plan enrollee, not exceed four double-sided pages in length, and not include print smaller than 12-point font.

(ii) A group health plan that utilizes two or more benefit packages (such as major medical coverage and a health flexible spending arrangement) may synthesize the information into a single SBC, or provide multiple SBCs.

(4) *Form*—(i) An SBC provided by an issuer offering group health insurance coverage to a plan (or its sponsor), may be provided in paper form. Alternatively, the SBC may be provided electronically (such as by email or an Internet posting) if the following three conditions are satisfied—

(A) The format is readily accessible by the plan (or its sponsor);

(B) The SBC is provided in paper form free of charge upon request; and

(C) If the electronic form is an Internet posting, the issuer timely advises the plan (or its sponsor) in paper form or email that the documents are available on the Internet and provides the Internet address.

(ii) An SBC provided by a group health plan or health insurance issuer to a participant or beneficiary may be provided in paper form. Alternatively, the SBC may be provided electronically (such as by email or an Internet posting) if the requirements of this paragraph (a)(4)(ii) are met.

(A) With respect to participants and beneficiaries covered under the plan, the SBC may be provided electronically as described in this paragraph (a)(4)(ii)(A). However, in all cases, the plan must provide the SBC in paper form if paper form is requested.

(*1*) In accordance with the Department of Labor's disclosure regulations at 29 CFR 2520.104b–1;

(*2*) In connection with online enrollment or online renewal of coverage under the plan; or

(*3*) In response to an online request made by a participant or beneficiary for the SBC.

(B) With respect to participants and beneficiaries who are eligible but not enrolled for coverage, the SBC may be provided electronically if:

(*1*) The format is readily accessible;

(*2*) The SBC is provided in paper form free of charge upon request; and

(*3*) In a case in which the electronic form is an Internet posting, the plan or issuer timely notifies the individual in paper form (such as a postcard) or email that the documents are available on the Internet, provides the Internet address, and notifies the individual that the documents are available in paper form upon request.

(5) *Language.* A group health plan or health insurance issuer must provide the SBC in a culturally and linguistically appropriate manner. For purposes of this paragraph (a)(5), a plan or issuer is considered to provide the SBC in a culturally and linguistically appropriate manner if the thresholds

and standards of § 2590.715–2719(e) are met as applied to the SBC.

(b) *Notice of modification.* If a group health plan, or health insurance issuer offering group health insurance coverage, makes any material modification (as defined under section 102 of ERISA) in any of the terms of the plan or coverage that would affect the content of the SBC, that is not reflected in the most recently provided SBC, and that occurs other than in connection with a renewal or reissuance of coverage, the plan or issuer must provide notice of the modification to enrollees not later than 60 days prior to the date on which the modification will become effective. The notice of modification must be provided in a form that is consistent with the rules of paragraph (a)(4) of this section.

(c) *Uniform glossary*—(1) *In general.* A group health plan, and a health insurance issuer offering group health insurance coverage, must make available to participants and beneficiaries the uniform glossary described in paragraph (c)(2) of this section in accordance with the appearance and form and manner requirements of paragraphs (c)(3) and (c)(4) of this section.

(2) *Health-coverage-related terms and medical terms.* The uniform glossary must provide uniform definitions, specified by the Secretary in guidance, of the following health-coverage-related terms and medical terms:

(i) Allowed amount, appeal, balance billing, co-insurance, complications of pregnancy, co-payment, deductible, durable medical equipment, emergency medical condition, emergency medical transportation, emergency room care, emergency services, excluded services, grievance, habilitation services, health insurance, home health care, hospice services, hospitalization, hospital outpatient care, in-network co-insurance, in-network co-payment, medically necessary, network, non-preferred provider, out-of-network co-insurance, out-of-network co-payment, out-of-pocket limit, physician services, plan, preauthorization, preferred provider, premium, prescription drug coverage, prescription drugs, primary care physician, primary care provider, provider, reconstructive surgery, rehabilitation services, skilled nursing care, specialist, usual customary and reasonable (UCR), and urgent care; and

(ii) Such other terms as the Secretary determines are important to define so that individuals and employers may compare and understand the terms of coverage and medical benefits (including any exceptions to those benefits), as specified in guidance.

(3) *Appearance.* A group health plan, and a health insurance issuer, must provide the uniform glossary with the appearance specified by the Secretary in guidance to ensure the uniform glossary is presented in a uniform format and uses terminology understandable by the average plan enrollee.

(4) *Form and manner.* A plan or issuer must make the uniform glossary described in this paragraph (c) available upon request, in either paper or electronic form (as requested), within seven business days after receipt of the request.

(d) *Preemption.* See § 2590.731. In addition, State laws that require a health insurance issuer to provide an SBC that supplies less information than required under paragraph (a) of this section are preempted.

(e) *Failure to provide.* A group health plan that willfully fails to provide information required under this section to a participant or beneficiary is subject to a fine of not more than $1,000 for each such failure. A failure with respect to each participant or beneficiary constitutes a separate offense for purposes of this paragraph (e). The Department will enforce this section using a process and procedure consistent with 29 CFR 2560.502c–2 of this chapter and 29 CFR part 2570, subpart C.

(f) *Applicability.* The requirements of this section do not apply to a group health plan benefit package that provides Medicare Advantage benefits pursuant to or 42 U.S.C. Chapter 7, Subchapter XVIII, Part C.

**Department of Health and Human Services**

**45 CFR Subtitle A**

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR part 147 as follows:

## PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 1. The authority citation for part 147 continues to read as follows:

**Authority:** Sections 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

■ 2. Revise § 147.200 to read as follows:

### § 147.200 Summary of benefits and coverage and uniform glossary.

(a) *Summary of benefits and coverage*—(1) *In general.* A group health plan (and its administrator as defined in section 3(16)(A) of ERISA)), and a health insurance issuer offering group or individual health insurance coverage, is required to provide a written summary of benefits and coverage (SBC) for each benefit package without charge to entities and individuals described in this paragraph (a)(1) in accordance with the rules of this section.

(i) *SBC provided by a group health insurance issuer to a group health plan*—(A) *Upon application.* A health insurance issuer offering group health insurance coverage must provide the SBC to a group health plan (or its sponsor) upon application for health coverage, as soon as practicable following receipt of the application, but in no event later than seven business days following receipt of the application. If an SBC was provided before application pursuant to paragraph (a)(1)(i)(D) of this section (relating to SBCs upon request), this paragraph (a)(1)(i)(A) is deemed satisfied, provided there is no change to the information required to be in the SBC. However, if there has been a change in the information required, a new SBC that includes the correct information must be provided upon application pursuant to this paragraph (a)(1)(i)(A).

(B) *By first day of coverage (if there are changes).* If there is any change in the information required to be in the SBC that was provided upon application and before the first day of coverage, the issuer must update and provide a current SBC to the plan (or its sponsor) no later than the first day of coverage.

(C) *Upon renewal, reissuance, or re-enrollment.* If the issuer renews or reissues a policy, certificate, or contract of insurance for a succeeding policy year, or automatically re-enrolls the policyholder or its participants and beneficiaries in coverage, the issuer must provide a new SBC as follows:

(*1*) If written application is required (in either paper or electronic form) for renewal or reissuance, the SBC must be provided no later than the date the written application materials are distributed.

(*2*) If renewal, reissuance, or re-enrollment is automatic, the SBC must be provided no later than 30 days prior to the first day of the new plan or policy year; however, with respect to an insured plan, if the policy, certificate, or contract of insurance has not been issued or renewed before such 30-day period, the SBC must be provided as soon as practicable but in no event later than seven business days after issuance of the new policy, certificate, or contract of insurance, or the receipt of written confirmation of intent to renew, whichever is earlier.

(D) *Upon request.* If a group health plan (or its sponsor) requests an SBC or summary information about a health insurance product from a health insurance issuer offering group health insurance coverage, an SBC must be provided as soon as practicable, but in no event later than seven business days following receipt of the request.

(ii) *SBC provided by a group health insurance issuer and a group health plan to participants and beneficiaries*—(A) *In general.* A group health plan (including its administrator, as defined under section 3(16) of ERISA), and a health insurance issuer offering group health insurance coverage, must provide an SBC to a participant or beneficiary (as defined under sections 3(7) and 3(8) of ERISA), and consistent with the rules of paragraph (a)(1)(iii) of this section, with respect to each benefit package offered by the plan or issuer for which the participant or beneficiary is eligible.

(B) *Upon application.* The SBC must be provided as part of any written application materials that are distributed by the plan or issuer for enrollment. If the plan or issuer does not distribute written application materials for enrollment, the SBC must be provided no later than the first date on which the participant is eligible to enroll in coverage for the participant or any beneficiaries. If an SBC was provided before application pursuant to paragraph (a)(1)(ii)(F) of this section (relating to SBCs upon request), this paragraph (a)(1)(ii)(B) is deemed satisfied, provided there is no change to the information required to be in the SBC. However, if there has been is a change in the information content, a new SBC that includes the correct information must be provided upon application pursuant to this paragraph (a)(1)(ii)(B).

(C) *By first day of coverage (if there are changes).* If there is any change to the information required to be in the SBC that was provided upon application and before the first day of coverage, the plan or issuer must update and provide a current SBC to a participant or beneficiary no later than the first day of coverage.

(D) *Special enrollees.* The plan or issuer must provide the SBC to special enrollees (as described in § 146.117 of this subchapter) no later than the date by which a summary plan description is required to be provided under the timeframe set forth in ERISA section 104(b)(1)(A) and its implementing regulations, which is 90 days from enrollment.

(E) *Upon renewal, reissuance, or re-enrollment.* If the plan or issuer requires participants or beneficiaries to renew in order to maintain coverage (for example, for a succeeding plan year), or automatically re-enrolls participants and beneficiaries in coverage, the plan or issuer must provide a new SBC, as follows:

(*1*) If written application is required for renewal, reissuance, or re-enrollment (in either paper or electronic form), the SBC must be provided no later than the date on which the written application materials are distributed.

(*2*) If renewal, reissuance, or re-enrollment is automatic, the SBC must be provided no later than 30 days prior to the first day of the new plan or policy year; however, with respect to an insured plan, if the policy, certificate, or contract of insurance has not been issued or renewed before such 30-day period, the SBC must be provided as soon as practicable but in no event later than seven business days after issuance of the new policy, certificate, or contract of insurance, or the receipt of written confirmation of intent to renew, whichever is earlier.

(F) *Upon request.* A plan or issuer must provide the SBC to participants or beneficiaries upon request for an SBC or summary information about the health coverage, as soon as practicable, but in no event later than seven business days following receipt of the request.

(iii) *Special rules to prevent unnecessary duplication with respect to group health coverage*—(A) An entity required to provide an SBC under this paragraph (a)(1) with respect to an individual satisfies that requirement if another party provides the SBC, but only to the extent that the SBC is timely and complete in accordance with the other rules of this section. Therefore, for example, in the case of a group health plan funded through an insurance policy, the plan satisfies the requirement to provide an SBC with respect to an individual if the issuer provides a timely and complete SBC to the individual. An entity required to provide an SBC under this paragraph (a)(1) with respect to an individual that contracts with another party to provide such SBC is considered to satisfy the requirement to provide such SBC if:

(*1*) The entity monitors performance under the contract;

(*2*) If the entity has knowledge that the SBC is not being provided in a manner that satisfies the requirements of this section and the entity has all information necessary to correct the noncompliance, the entity corrects the noncompliance as soon as practicable; and

(*3*) If the entity has knowledge the SBC is not being provided in a manner that satisfies the requirements of this section and the entity does not have all information necessary to correct the noncompliance, the entity communicates with participants and beneficiaries who are affected by the noncompliance regarding the regarding the noncompliance, and begins taking significant steps as soon as practicable to avoid future violations.

(B) If a single SBC is provided to a participant and any beneficiaries at the participant's last known address, then the requirement to provide the SBC to the participant and any beneficiaries is generally satisfied. However, if a beneficiary's last known address is different than the participant's last known address, a separate SBC is required to be provided to the beneficiary at the beneficiary's last known address.

(C) With respect to a group health plan that offers multiple benefit packages, the plan or issuer is required to provide a new SBC automatically to participants and beneficiaries upon renewal or re-enrollment only with respect to the benefit package in which a participant or beneficiary is enrolled (or will be automatically re-enrolled under the plan); SBCs are not required to be provided automatically upon renewal or re-enrollment with respect to benefit packages in which the participant or beneficiary is not enrolled (or will not automatically be enrolled). However, if a participant or beneficiary requests an SBC with respect to another benefit package (or more than one other benefit package) for which the participant or beneficiary is eligible, the SBC (or SBCs, in the case of a request for SBCs relating to more than one benefit package) must be provided upon request as soon as practicable, but in no event later than seven business days following receipt of the request.

(iv) *SBC provided by a health insurance issuer offering individual health insurance coverage*—(A) *Upon application.* A health insurance issuer offering individual health insurance coverage must provide an SBC to an individual covered under the policy (including every dependent) upon receiving an application for any health insurance policy, as soon as practicable following receipt of the application, but in no event later than seven business days following receipt of the application. If an SBC was provided before application pursuant to paragraph (a)(1)(iv)(D) of this section (relating to SBCs upon request), this paragraph (a)(1)(iv)(A) is deemed satisfied, provided there is no change to the information required to be in the SBC. However, if there has been a change in the information content, a

new SBC that includes the correct information must be provided upon application pursuant to this paragraph (a)(1)(iv)(A).

(B) *By first day of coverage (if there are changes).* If there is any change in the information required to be in the SBC that was provided upon application and before the first day of coverage, the issuer must update and provide a current SBC to the individual no later than the first day of coverage.

(C) *Upon renewal, reissuance, or re-enrollment.* If the issuer renews or reissues a policy, certificate, or contract of insurance for a succeeding policy year, or automatically re-enrolls an individual (or dependent) covered under a policy, certificate, or contract of insurance into a policy, certificate, or contract of insurance under a different plan or product, the issuer must provide an SBC for the coverage in which the individual (including every dependent) will be enrolled, as follows:

(*1*) If written application is required (in either paper or electronic form) for renewal, reissuance, or re-enrollment, the SBC must be provided no later than the date on which the written application materials are distributed.

(*2*) If renewal, reissuance, or re-enrollment is automatic, the SBC must be provided no later than 30 days prior to the first day of the new policy year; however, if the policy, certificate, or contract of insurance has not been issued or renewed before such 30 day period, the SBC must be provided as soon as practicable but in no event later than seven business days after issuance of the new policy, certificate, or contract of insurance, or the receipt of written confirmation of intent to renew, whichever is earlier.

(D) *Upon request.* A health insurance issuer offering individual health insurance coverage must provide an SBC to any individual or dependent upon request for an SBC or summary information about a health insurance product as soon as practicable, but in no event later than seven business days following receipt of the request.

(v) *Special rule to prevent unnecessary duplication with respect to individual health insurance coverage.*—(A) *In general.* If a single SBC is provided to an individual and any dependents at the individual's last known address, then the requirement to provide the SBC to the individual and any dependents is generally satisfied. However, if a dependent's last known address is different than the individual's last known address, a separate SBC is required to be provided to the dependent at the dependents' last known address.

(B) *Student health insurance coverage.* With respect to student health insurance coverage as defined at § 147.145(a), the requirement to provide an SBC to an individual will be considered satisfied for an entity if another party provides a timely and complete SBC to the individual.

(2) *Content*—(i) *In general.* Subject to paragraph (a)(2)(iii) of this section, the SBC must include the following:

(A) Uniform definitions of standard insurance terms and medical terms so that consumers may compare health coverage and understand the terms of (or exceptions to) their coverage, in accordance with guidance as specified by the Secretary;

(B) A description of the coverage, including cost sharing, for each category of benefits identified by the Secretary in guidance;

(C) The exceptions, reductions, and limitations of the coverage;

(D) The cost-sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations;

(E) The renewability and continuation of coverage provisions;

(F) Coverage examples, in accordance with the rules of paragraph (a)(2)(ii) of this section;

(G) With respect to coverage beginning on or after January 1, 2014, a statement about whether the plan or coverage provides minimum essential coverage as defined under section 5000A(f) and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage meets applicable requirements;

(H) A statement that the SBC is only a summary and that the plan document, policy, certificate, or contract of insurance should be consulted to determine the governing contractual provisions of the coverage;

(I) Contact information for questions;

(J) For issuers, an Internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained;

(K) For plans and issuers that maintain one or more networks of providers, an Internet address (or similar contact information) for obtaining a list of network providers; (L) For plans and issuers that use a formulary in providing prescription drug coverage, an Internet address (or similar contact information) for obtaining information on prescription drug coverage;

(M) An Internet address for obtaining the uniform glossary, as described in paragraph (c) of this section, as well as a contact phone number to obtain a paper copy of the uniform glossary, and a disclosure that paper copies are available; and

(N) For qualified health plans sold through an individual market Exchange that exclude or provide for coverage of the services described in § 156.280(d)(1) of this subchapter, a notice of exclusion or such coverage.

(ii) *Coverage examples.* The SBC must include coverage examples specified by the Secretary in guidance that illustrate benefits provided under the plan or coverage for common benefits scenarios (including pregnancy and serious or chronic medical conditions) in accordance with this paragraph (a)(2)(ii).

(A) *Number of examples.* The Secretary may identify up to six coverage examples that may be required in an SBC.

(B) *Benefits scenarios.* For purposes of this paragraph (a)(2)(ii), a benefits scenario is a hypothetical situation, consisting of a sample treatment plan for a specified medical condition during a specific period of time, based on recognized clinical practice guidelines as defined by the National Guideline Clearinghouse, Agency for Healthcare Research and Quality. The Secretary will specify, in guidance, the assumptions, including the relevant items and services and reimbursement information, for each claim in the benefits scenario.

(C) *Illustration of benefit provided.* For purposes of this paragraph (a)(2)(ii), to illustrate benefits provided under the plan or coverage for a particular benefits scenario, a plan or issuer simulates claims processing in accordance with guidance issued by the Secretary to generate an estimate of what an individual might expect to pay under the plan, policy, or benefit package. The illustration of benefits provided will take into account any cost sharing, excluded benefits, and other limitations on coverage, as specified by the Secretary in guidance.

(iii) *Coverage provided outside the United States.* In lieu of summarizing coverage for items and services provided outside the United States, a plan or issuer may provide an Internet address (or similar contact information) for obtaining information about benefits and coverage provided outside the United States. In any case, the plan or issuer must provide an SBC in accordance with this section that accurately summarizes benefits and coverage available under the plan or coverage within the United States.

(3) *Appearance.* (i) A group health plan and a health insurance issuer must

provide an SBC in the form, and in accordance with the instructions for completing the SBC, that are specified by the Secretary in guidance. The SBC must be presented in a uniform format, use terminology understandable by the average plan enrollee (or, in the case of individual market coverage, the average individual covered under a health insurance policy), not exceed four double-sided pages in length, and not include print smaller than 12-point font. A health insurance issuer offering individual health insurance coverage must provide the SBC as a stand-alone document.

(ii) A group health plan that utilizes two or more benefit packages (such as major medical coverage and a health flexible spending arrangement) may synthesize the information into a single SBC, or provide multiple SBCs.

(4) *Form*—(i) An SBC provided by an issuer offering group health insurance coverage to a plan (or its sponsor), may be provided in paper form. Alternatively, the SBC may be provided electronically (such as by email or an Internet posting) if the following three conditions are satisfied—

(A) The format is readily accessible by the plan (or its sponsor);

(B) The SBC is provided in paper form free of charge upon request; and

(C) If the electronic form is an Internet posting, the issuer timely advises the plan (or its sponsor) in paper form or email that the documents are available on the Internet and provides the Internet address.

(ii) An SBC provided by a group health plan or health insurance issuer to a participant or beneficiary may be provided in paper form. Alternatively, the SBC may be provided electronically (such as by email or an Internet posting) if the requirements of this paragraph (a)(4)(ii) are met.

(A) With respect to participants and beneficiaries covered under the plan or coverage, the SBC may be provided electronically as described in this paragraph (a)(4)(ii)(A). However, in all cases, the plan or issuer must provide the SBC in paper form if paper form is requested.

(*1*) In accordance with the Department of Labor's disclosure regulations at 29 CFR 2520.104b–1;

(*2*) In connection with online enrollment or online renewal of coverage under the plan; or

(*3*) In response to an online request made by a participant or beneficiary for the SBC.

(B) With respect to participants and beneficiaries who are eligible but not enrolled for coverage, the SBC may be provided electronically if:

(*1*) The format is readily accessible;

(*2*) The SBC is provided in paper form free of charge upon request; and

(*3*) In a case in which the electronic form is an Internet posting, the plan or issuer timely notifies the individual in paper form (such as a postcard) or email that the documents are available on the Internet, provides the Internet address, and notifies the individual that the documents are available in paper form upon request.

(iii) An issuer offering individual health insurance coverage must provide an SBC in a manner that can reasonably be expected to provide actual notice in paper or electronic form.

(A) An issuer satisfies the requirements of this paragraph (a)(4)(iii) if the issuer:

(*1*) Hand-delivers a printed copy of the SBC to the individual or dependent;

(*2*) Mails a printed copy of the SBC to the mailing address provided to the issuer by the individual or dependent;

(*3*) Provides the SBC by email after obtaining the individual's or dependent's agreement to receive the SBC or other electronic disclosures by email;

(*4*) Posts the SBC on the Internet and advises the individual or dependent in paper or electronic form, in a manner compliant with paragraphs (a)(4)(iii)(A)(1) through (3), that the SBC is available on the Internet and includes the applicable Internet address; or

(*5*) Provides the SBC by any other method that can reasonably be expected to provide actual notice.

(B) An SBC may not be provided electronically unless:

(*1*) The format is readily accessible;

(*2*) The SBC is placed in a location that is prominent and readily accessible;

(*3*) The SBC is provided in an electronic form which can be electronically retained and printed;

(*4*) The SBC is consistent with the appearance, content, and language requirements of this section;

(*5*) The issuer notifies the individual or dependent that the SBC is available in paper form without charge upon request and provides it upon request.

(C) *Deemed compliance.* A health insurance issuer offering individual health insurance coverage that provides the content required under paragraph (a)(2) of this section, as specified in guidance published by the Secretary, to the federal health reform Web portal described in § 159.120 of this subchapter will be deemed to satisfy the requirements of paragraph (a)(1)(iv)(D) of this section with respect to a request for summary information about a health insurance product made prior to an application for coverage. However, nothing in this paragraph should be construed as otherwise limiting such issuer's obligations under this section.

(iv) An SBC provided by a self-insured non-Federal governmental plan may be provided in paper form. Alternatively, the SBC may be provided electronically if the plan conforms to either the substance of the provisions in paragraph (a)(4)(ii) or (a)(4)(iii) of this section.

(5) *Language.* A group health plan or health insurance issuer must provide the SBC in a culturally and linguistically appropriate manner. For purposes of this paragraph (a)(5), a plan or issuer is considered to provide the SBC in a culturally and linguistically appropriate manner if the thresholds and standards of § 147.136(e) are met as applied to the SBC.

(b) *Notice of modification.* If a group health plan, or health insurance issuer offering group or individual health insurance coverage, makes any material modification (as defined under section 102 of ERISA) in any of the terms of the plan or coverage that would affect the content of the SBC, that is not reflected in the most recently provided SBC, and that occurs other than in connection with a renewal or reissuance of coverage, the plan or issuer must provide notice of the modification to enrollees (or, in the case of individual market coverage, an individual covered under a health insurance policy) not later than 60 days prior to the date on which the modification will become effective. The notice of modification must be provided in a form that is consistent with the rules of paragraph (a)(4) of this section.

(c) *Uniform glossary*—(1) *In general.* A group health plan, and a health insurance issuer offering group health insurance coverage, must make available to participants and beneficiaries, and a health insurance issuer offering individual health insurance coverage must make available to applicants, policyholders, and covered dependents, the uniform glossary described in paragraph (c)(2) of this section in accordance with the appearance and form and manner requirements of paragraphs (c)(3) and (c)(4) of this section.

(2) *Health-coverage-related terms and medical terms.* The uniform glossary must provide uniform definitions, specified by the Secretary in guidance, of the following health-coverage-related terms and medical terms:

(i) Allowed amount, appeal, balance billing, co-insurance, complications of pregnancy, co-payment, deductible, durable medical equipment, emergency medical condition, emergency medical

transportation, emergency room care, emergency services, excluded services, grievance, habilitation services, health insurance, home health care, hospice services, hospitalization, hospital outpatient care, in-network co-insurance, in-network co-payment, medically necessary, network, non-preferred provider, out-of-network co-insurance, out-of-network co-payment, out-of-pocket limit, physician services, plan, preauthorization, preferred provider, premium, prescription drug coverage, prescription drugs, primary care physician, primary care provider, provider, reconstructive surgery, rehabilitation services, skilled nursing care, specialist, usual customary and reasonable (UCR), and urgent care; and

(ii) Such other terms as the Secretary determines are important to define so that individuals and employers may compare and understand the terms of coverage and medical benefits (including any exceptions to those benefits), as specified in guidance.

(3) *Appearance.* A group health plan, and a health insurance issuer, must provide the uniform glossary with the appearance specified by the Secretary in guidance to ensure the uniform glossary is presented in a uniform format and uses terminology understandable by the average plan enrollee (or, in the case of individual market coverage, an average individual covered under a health insurance policy).

(4) *Form and manner.* A plan or issuer must make the uniform glossary described in this paragraph (c) available upon request, in either paper or electronic form (as requested), within seven business days after receipt of the request.

(d) *Preemption.* For purposes of this section, the provisions of section 2724 of the PHS Act continue to apply with respect to preemption of State law. In addition, State laws that require a health insurance issuer to provide an SBC that supplies less information than required under paragraph (a) of this section are preempted.

(e) *Failure to provide.* A health insurance issuer or a non-federal governmental health plan that willfully fails to provide information to a covered individual required under this section is subject to a fine of not more than $1,000 for each such failure. A failure with respect to each covered individual constitutes a separate offense for purposes of this paragraph (e). HHS will enforce these provisions in a manner consistent with §§ 150.101 through 150.465 of this subchapter.

(f) *Applicability.* The requirements of this section do not apply to a group health plan benefit package that provides Medicare Advantage benefits pursuant to or 42 U.S.C. Chapter 7, Subchapter XVIII, Part C.

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Part III

## Department of Energy

10 CFR Part 431

Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps; Proposed Rule

**DEPARTMENT OF ENERGY**

**10 CFR Part 431**

**[Docket Number EERE–2012–BT–STD–0041]**

**RIN 1904–AC85**

## Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of proposed rulemaking (NOPR) and announcement of public meeting.

**SUMMARY:** The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including single package vertical air conditioners and single package vertical heat pumps. EPCA also requires that each time the American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE) Standard 90.1 is amended with respect to the standard levels or design requirements applicable to that equipment, the U.S. Department of Energy (DOE) must adopt amended uniform national standards for this equipment equivalent to those in ASHRAE Standard 90.1, unless DOE determines that there is clear and convincing evidence showing that more-stringent, amended standards would be technologically feasible and economically justified, and would save a significant additional amount of energy. DOE has tentatively concluded that there is sufficient record evidence to support more-stringent standards for two classes of this equipment. However, for four equipment classes, DOE is proposing to adopt the revised ASHRAE levels, due to the absence of any models on the market in two classes, and absence of any models above the revised ASHRAE level in the remaining two classes. Accordingly, DOE is proposing amended energy conservation standards for all classes of single package vertical air conditioners and single package vertical heat pumps. DOE also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

**DATES:** *Comments:* DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than March 2, 2015. See section VII, ''Public Participation,'' for details.

*Meeting:* DOE will hold a public meeting on Friday, February 6, 2014, from 8:30 a.m. to 12:30 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section VII, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

**ADDRESSES:** The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Persons may also attend the public meeting via webinar. For more information, refer to section VII, ''Public Participation,'' near the end of the preamble.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding identification (ID) requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. As a result, driver's licenses from the following States or territory will not be accepted for building entry, and instead, one of the alternate forms of ID listed below will be required.

DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington.

Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the States of Minnesota, New York or Washington (Enhanced licenses issued by these States are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

*Instructions:* Any comments submitted must identify the NOPR for Energy Conservation Standards for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps, and provide docket number EERE–2012–BT–STD–0041 and/or regulatory information number (RIN) number 1904–AC85. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: SPVU2012STD0041@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S._Whiteman@omb.eop.gov.*

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII of this document (Public Participation).

*Docket:* The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=107.* This Web page contains a link to the docket for this NOPR on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section VII, ''Public Participation,'' for further information on how to submit comments through *www.regulations.gov.*

For further 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:** Mr. Ron Majette, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7935. Email: *Ronald.Majette@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

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## I. Summary of the Proposed Rule

Title III, Part C[1] of the Energy Policy and Conservation Act of 1975 (''EPCA'' or ''the Act''), Pub. L. 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which includes the single package vertical air conditioners (SPVACs) and single package vertical heat pumps (SPVHPs) that are the subject of this rulemaking (collectively referred to as single package vertical units or SPVUs). Pursuant to EPCA, not later than 3 years after the date of enactment of the Energy Independence and Security Act of 2007 (EISA 2007), DOE must review the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1 (ASHRAE Standard 90.1), ''*Energy Standard for Buildings Except Low-Rise Residential Buildings,*'' with respect to single package vertical air conditioners and single package vertical heat pumps in accordance with the procedures established in 42 U.S.C. 6313(a)(6). (42 U.S.C. 6313(a)(10)(B))

At the time DOE commenced this rulemaking, the Department had not considered adoption of the then-current ASHRAE Standard 90.1–2010 levels as part of its analytical baseline (as is typically the case under 42 U.S.C. 6313(a)(6)), because the current energy conservation standards for SPVUs were already set at those levels by EPCA. However, on October 9, 2013, ASHRAE adopted ASHRAE Standard 90.1–2013, and this revision did contain amended standard levels for SPVUs, thereby triggering DOE's statutory obligation to promulgate an amended uniform national standard at those levels, unless DOE determines that there is clear and convincing evidence supporting the adoption of more-stringent energy conservation standards than the ASHRAE levels. The test for adoption of more-stringent standards is whether such standards would result in significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(I) and (II)) Once complete, this rulemaking will satisfy DOE's statutory obligations under both 42 U.S.C. 6313(a)(6) and (10)(B).

In accordance with these and other statutory provisions discussed in this preamble, DOE has tentatively concluded that there is sufficient evidence to support more-stringent standards for two classes of SPVUs. For the remaining four equipment classes,

[1] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

DOE has tentatively decided to adopt the levels in ASHRAE Standard 90.1–2013. Accordingly, DOE is proposing amended energy conservation standards for all classes of single package vertical air conditioners and single package vertical heat pumps. As shown in Table I.1, the proposed standards are expressed in terms of: (1) Energy efficiency ratio (EER), which is the ratio of the produced cooling effect of an air conditioner or heat pump to its total work input; and (2) coefficient of performance (COP), which is the ratio of produced heating effect to total work input (applicable only to heat pump units).

If adopted, the proposed standards listed in Table I.1 that are more stringent than those contained in ASHRAE Standard 90.1–2013 would apply to such equipment manufactured in, or imported into, the United States, excluding equipment that is manufactured for export, on and after a date four years after publication of an energy conservation standards final rule. If adopted, the proposed standards listed in Table I.1 that are set at the levels contained in ASHRAE Standard 90.1–2013 would apply to such equipment manufactured in, or imported into, the United States, excluding equipment that is manufactured for export, on and after a date two or three years after the effective date of the requirements in ASHRAE Standard 90.1–2013, depending on equipment size (*i.e.,* October 9, 2015 or 2016).

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR SPVUS

| Equipment class | Cooling capacity *Btu/h* | Efficiency level | Standard level | Anticipated compliance date |
|---|---|---|---|---|
| Single Package Vertical Air Conditioner. | <65,000 Btu/h | EER =11.0 | More Stringent than ASHRAE. | 2019. [4 years after publication of final rule]. |
| Single Package Vertical Air Conditioner. | ≥65,000 Btu/h and <135,000 Btu/h. | EER = 10.0 | ASHRAE | October 9, 2015. |
| Single Package Vertical Air Conditioner. | ≥135,000 Btu/h and <240,000 Btu/h. | EER = 10.0 | ASHRAE | October 9, 2016. |
| Single Package Vertical Heat Pump | <65,000 Btu/h | EER = 11.0 COP = 3.3 | More Stringent than ASHRAE. | 2019. [4 years after publication of final rule]. |
| Single Package Vertical Heat Pump | ≥65,000 Btu/h and <135,000 Btu/h. | EER = 10.0 COP = 3.0 | ASHRAE | October 9, 2015. |
| Single Package Vertical Heat Pump | ≥135,000 Btu/h and <240,000 Btu/h. | EER = 10.0 COP = 3.0 | ASHRAE | October 9, 2016. |

*A. Benefits and Costs to Consumers*

Table I.2 presents DOE's evaluation of the economic impacts of the proposed energy conservation standards on consumers of SPVACs and SPVHPs, as measured by the average life-cycle cost (LCC) savings and the median payback period (PBP). In order to adopt levels above the levels specified in ASHRAE Standard 90.1, DOE must determine that such more-stringent standards would result in significant additional conservation of energy (relative to the efficiency levels specified in ASHRAE Standard 90.1) and that it would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) In compliance with this statutory requirement, DOE based its determination to adopt more stringent standards on an analysis comparing these proposed standards with ASHRAE 90.1–2013 (Table I.2). Thus, economic impacts of this determination are calculated as compared to the ASHRAE 90.1–2013 level because DOE is required by statute to, at a minimum, adopt that standard.[2]

The Office of Management and Budget's Circular A–4 [3] provides guidance on establishing the baseline for regulatory impact analyses as follows:

> In some cases, substantial portions of a rule may simply restate statutory requirements that would be self-implementing, even in the absence of the regulatory action. In these cases, you should use a pre-statute baseline. If you are able to separate out those areas where the agency has discretion, you may also use a post-statute baseline to evaluate the discretionary elements of the action.

Accordingly, DOE presents consumer, manufacturer, and economic costs and benefits for the proposed SPVU standards as compared to the current Federal (EPCA) minimum that are currently in effect (pre-statute baseline). In addition, as required by Statute in this case when proposing a standard more stringent than ASHRAE 90.1, and recommended by Circular A–4, DOE also provides these same analyses relative to the post-statute (ASHRAE 90.1–2013) baseline. As noted above, it is these latter analyses that DOE has used as the basis for its determination to adopt more stringent standards. The same analytic methodologies are used in both baselines. Key analyses (using both baselines) are summarized in this Executive Summary in Tables I–2: Impacts of Proposed Energy Conservation Standards on Consumers of SPVUs; I–3: Summary of National Economic Benefits and Costs of Proposed SPVU Energy Conservation Standards; and I–4 and I–5: Annualized Benefits and Costs of Proposed Energy Conservation Standards for SPVUs. Additional analyses are presented in section V.C of this preamble, and in the NOPR TSD. Note that not all analyses were conducted using both baselines; rather DOE used the baseline(s) most appropriate to the purpose of the analysis (showing economic impacts relative to the pre-statute status quo and/or determining whether to adopt standards more stringent than ASHRAE 2013). In all cases, the baseline(s) used are indicated in the analyses.

In overview, the average LCC savings are positive for the equipment classes for which standards higher than the levels in ASHRAE 90.1–2013 are being proposed. DOE did not evaluate economic impacts to the consumers of

[2] See 42 U.S.C. 6313(a)(6)(A)(ii)(I): In general.—Except as provided in subclause (II), not later than 18 months after the date of publication of the amendment to the ASHRAE/IES Standard 90.1 for a product described in clause (i), the Secretary shall establish an amended uniform national standard for the product at the minimum level specified in the amended ASHRAE/IES Standard 90.1.

[3] U.S. Office of Management and Budget ''Circular A–4: Regulatory Analysis'' (Sept. 17, 2003) contains guidelines regarding development of a baseline, including that ''This baseline should be the best assessment of the way the world would look absent the proposed action.'' (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

SPVACs ≥65,000 Btu/h and <135,000 Btu/h for the ASHRAE baseline, as the ASHRAE level is equal to max-tech. However the economic impacts for this equipment class using the EPCA baseline can be found in Table I.2 and in appendix 8B of the NOPR TSD. DOE also presents results for the parallel class of SPVHPs ≥65,000 Btu/h and <135,000 Btu/h using the EPCA baseline.[4] DOE did not evaluate economic impacts for the large equipment classes because there are no models on the market, and, therefore, no consumers.[5]

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF SPVUS FOR ASHRAE AND EPCA BASELINE

| Equipment class | Cooling capacity *Btu/h* | Average LCC savings *2013$* | | Median payback period *years* | |
|---|---|---|---|---|---|
| | | ASHRAE baseline | EPCA baseline | ASHRAE baseline | EPCA baseline |
| Single Package Vertical Air Conditioner | <65,000 Btu/h | $179 | $261 | 8.4 | 10.4 |
| Single Package Vertical Air Conditioner | ≥65,000 Btu/h and <135,000 Btu/h. | Adopt ASHRAE. | 737 | Adopt ASHRAE. | 7.0 |
| Single Package Vertical Air Conditioner | ≥135,000 Btu/h and <240,000 Btu/h. | Adopt ASHRAE. | N/A | Adopt ASHRAE. | N/A |
| Single Package Vertical Heat Pump | <65,000 Btu/h | $424 | 382 | 4.8 | 9.3 |
| Single Package Vertical Heat Pump | ≥65,000 Btu/h and <135,000 Btu/h. | Adopt ASHRAE. | 241 | Adopt ASHRAE. | 10.9 |
| Single Package Vertical Heat Pump | ≥135,000 Btu/h and <240,000 Btu/h. | Adopt ASHRAE. | N/A | Adopt ASHRAE. | N/A |

**Note:** Expected life of SPVUs is on average 15 years.

*B. Impact on Manufacturers*

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2014 to 2048). Using a real discount rate of 10.4 percent,[6] DOE estimates that the INPV for manufacturers of SPVUs is $36.5 million in 2013$ using ASHRAE 2013 as a baseline. The INPV of SPVUs from the EPCA baseline can be found in chapter 12 of the NOPR TSD. Under the proposed standards, DOE expects that manufacturers may lose up to 9.0 percent of their INPV, which is approximately $3.3 million.

*C. National Benefits*[7]

DOE's analyses indicate that the proposed energy conservation standards for SPVUs would save a significant amount of energy. The cumulative energy savings for SPVUs purchased in the 30-year period that begins in the year of compliance with amended standards (2019–2048) amount to 0.23 quadrillion Btus (quads) using ASHRAE as a baseline. This is a savings of 6 percent relative to the energy use of this equipment.[8] Energy savings using EPCA as a baseline can be found in chapter 10 of the NOPR TSD.

The cumulative net present value (NPV) of total customer costs and savings of the proposed SPVU standards ranges from $0.11 billion (at a 7-percent discount rate) to $0.44 billion (at a 3-percent discount rate) using ASHRAE as a baseline. NPV results using EPCA as a baseline can be found in chapter 10 of the NOPR TSD. This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for SPVUs purchased in 2019–2048.

In addition, the proposed standards would have significant environmental benefits. The energy savings described above using the ASHRAE baseline would result in cumulative emission reductions (over the same period as for energy savings) of 20 million metric tons (Mt)[9] of carbon dioxide ($CO_2$), 59 thousand tons of methane, 53 thousand tons of sulfur dioxide ($SO_2$), 18 thousand tons of nitrogen oxides ($NO_X$), and 0.06 tons of mercury (Hg).[10] The cumulative reduction in $CO_2$ emissions through 2030 amounts to 2.2 Mt. Emissions results using the EPCA baseline can be found in chapter 13 of the NOPR TSD, and cumulative reduction in $CO_2$ emissions through 2030 amounts to 4.7 Mt relative to the EPCA baseline.

The value of the $CO_2$ reductions is calculated using a range of values per metric ton of $CO_2$ (otherwise known as the Social Cost of Carbon, or SCC) developed by a recent Federal interagency process.[11] The derivation of

[4] However, there are no models available on the market for this class, and therefore these results are not carried into the national impact analysis or other downstream analyses.

[5] Equipment classes for these cooling capacities exist in ASHRAE Standard 90.1 and were established in DOE regulation through EISA 2007. Despite the lack of models and consumers, for these equipment classes DOE is proposing to adopt as federal standards the efficiency levels in ASHRAE 90.1–2013 as required under 42 U.S.C. 6313(a)(6)(A)(ii)(I).

[6] DOE estimated draft financial metrics, including the industry discount rate, based on data in Securities and Exchange Commission (SEC) filings and on industry-reviewed values published in prior HVAC final rules. DOE presented the draft financial metrics to manufacturer in MIA interviews. DOE adjusted those values based on feedback from manufacturers. The complete set of financial metrics and more detail about the methodology can be found in section 12.4.3 of TSD chapter 12.

[7] All monetary values in this section are expressed in 2013 dollars and are discounted to 2014. National benefits apply only to DOE's proposed standard levels that are higher than the ASHRAE levels, and impacts are presented as compared to the ASHRAE 90.1–2013 level as baseline. For equipment classes where DOE is proposing the ASHRAE levels, national benefits do not accrue.

[8] The base case assumptions are described in section IV.G.

[9] A metric ton is equivalent to 1.1 short tons. Results for $NO_X$ and Hg are presented in short tons.

[10] DOE calculated emissions reductions relative to the *Annual Energy Outlook 2013* (*AEO 2013*) Reference case, which generally represents current legislation and environmental regulations for which implementing regulations were available as of December 31, 2012. Emissions factors based on the *Annual Energy Outlook 2014* (*AEO 2014*), which became available too late for incorporation into this analysis, indicate that a significant decrease in the cumulative emission reductions of carbon dioxide and most other pollutants can be expected if the projections of power plant utilization assumed in *AEO 2014* are realized. For example, the estimated amount of cumulative emission reductions of $CO_2$ is expected to decrease by 33% from DOE's current estimate based on the projections in *AEO 2014* relative to *AEO 2013*. The monetized benefits from GHG reductions would likely decrease by a comparable amount. DOE plans to use emissions factors based on the most recent *AEO* available for the next phase of this rulemaking, which may or may not be AEO 2014, depending on the timing of the issuance of the next rulemaking document.

[11] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May

Continued

the SCC values is discussed in section IV.K. DOE estimates that the present monetary value of the $CO_2$ emissions reduction described above is between $0.12 and $1.9 billion using the ASHRAE baseline. DOE also estimates the present monetary value of the $NO_X$ emissions reduction using the ASHRAE baseline is $7.3 million at a 7-percent discount rate and $21 million at a 3-percent discount rate.[12] Results using the EPCA baseline can be found in chapter 14 of the NOPR TSD.

Table I.3 summarizes the national economic costs and benefits expected to result from the proposed standards for SPVUs using both the ASHRAE and EPCA baselines.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED SPVU ENERGY CONSERVATION STANDARDS USING ASHRAE AND EPCA BASELINES*

| Category | Present value *Billion 2013$* | | Discount rate % |
|---|---|---|---|
| | ASHRAE baseline | EPCA baseline | |
| **Benefits** | | | |
| Consumer Operating Cost Savings | 0.49 | 1.0 | 7 |
| | 1.2 | 2.6 | 3 |
| $CO_2$ Reduction Monetized Value ($12.0/t case)** | 0.12 | 0.26 | 5 |
| $CO_2$ Reduction Monetized Value ($40.5/t case)** | 0.60 | 1.2 | 3 |
| $CO_2$ Reduction Monetized Value ($62.4/t case)** | 1.0 | 2.0 | 2.5 |
| $CO_2$ Reduction Monetized Value ($119/t case)** | 1.9 | 3.8 | 3 |
| $NO_X$ Reduction Monetized Value (at $2,684/ton)** | 0.0073 | 0.015 | 7 |
| | 0.021 | 0.042 | 3 |
| Total Benefits† | 1.1 | 2.3 | 7 |
| | 1.9 | 3.8 | 3 |
| **Costs** | | | |
| Consumer Incremental Installed Costs | 0.38 | 0.77 | 7 |
| | 0.79 | 1.5 | 3 |
| **Net Benefits** | | | |
| Including $CO_2$ and $NO_X$ Reduction Monetized Value | 0.72 | 1.5 | 7 |
| | 1.1 | 2.3 | 3 |

* This table presents the costs and benefits associated with SPVU shipped in 2019–2048. These results include benefits to customers which accrue after 2044 from the equipment purchased in 2019–2048. The results account for the incremental variable and fixed costs incurred by manufacturers due to the amended standard, some of which may be incurred in preparation for this final rule.

** The $CO_2$ values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series used by DOE incorporates an escalation factor.[13]

† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to SCC value of $40.5/t in 2015.

The benefits and costs of these proposed standards, for equipment sold in 2019–2048, can also be expressed in terms of annualized values. The annualized monetary values are the sum of: (1) The annualized national economic value of the benefits from customer operation of equipment that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase and installation costs, which is another way of representing customer NPV); and (2) the annualized monetary value of the benefits of emission reductions, including $CO_2$ emission reductions.[14]

Although combining the values of operating savings and $CO_2$ emission reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. customer monetary savings that occur as a result of market transactions, whereas the value of $CO_2$ reductions is based on a global value. Second, the assessments of operating cost savings and $CO_2$ savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of equipment shipped in 2019–2048. Because carbon dioxide emissions have a very long residence time in the

2013; revised November 2013) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf*).

[12] DOE is currently investigating valuation of avoided Hg and $SO_2$ emissions.

[13] The $CO_2$ and $NO_X$ results are based on emissions factors in *AEO 2013,* the most recent version available at the time of this analysis. Use of emissions factors in *AEO 2014* would result in a significant decrease in cumulative emissions reductions for $CO_2$, estimated at 33%, and an increase in $NO_X$, estimated at 13%. In the next phase of this rulemaking, DOE plans to use emissions factors based on the most recent *AEO* available, which may or may not be *AEO 2014,* depending on the timing of the issuance of the next rulemaking document.

[14] DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2014, the year used for discounting the NPV of total consumer costs and savings, for the time-series of costs and benefits using discount rates of three and seven percent for all costs and benefits except for the value of $CO_2$ reductions. For the latter, DOE used a range of discount rates, as shown in Table I.3. From the present value, DOE then calculated the fixed annual payment over a 30-year period (2019 through 2048) that yields the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined is a steady stream of payments.

atmosphere,[15] the SCC values reflect future climate-related impacts resulting from the emission of one ton of carbon dioxide that continue well beyond 2100.

Estimates of annualized benefits and costs of the proposed standards (over a 30-year period) are shown in Table I.4. The results under the primary estimate using the ASHRAE baseline are as follows. Using a 7-percent discount rate for benefits and costs other than $CO_2$ reduction, for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.5/t in 2015, the cost of the proposed standards is $29 million per year in increased equipment costs, while the benefits are $38 million per year in reduced equipment operating costs, $29 million from $CO_2$ reductions, and $0.57 million from reduced $NO_X$ emissions. In this case, the annualized net benefit amounts to $38 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.5/t in 2015, the cost of the standards proposed in today's rule is $37 million per year in increased equipment costs, while the benefits are $58 million per year in reduced operating costs, $29 million from $CO_2$ reductions, and $0.97 million in reduced $NO_X$ emissions. In this case, the net benefit amounts to $51 million per year.[16] Results using the EPCA baseline are shown in Table I.5.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR SPVUS

[ASHRAE baseline]

| | Discount rate | Primary estimate* | Low net benefits estimate* | High net benefits estimate* |
|---|---|---|---|---|
| | | *million 2013$/year* | | |
| **Benefits** | | | | |
| Operating Cost Savings | 7% | 38 | 36 | 39. |
| | 3% | 58 | 55 | 61. |
| $CO_2$ Reduction Monetized Value ($12.0/t case)** | 5% | 7.7 | 7.6 | 7.7. |
| $CO_2$ Reduction Monetized Value ($40.5/t case)** | 3% | 29 | 28 | 29. |
| $CO_2$ Reduction Monetized Value ($62.4/t case)** | 2.5% | 43 | 42 | 43. |
| $CO_2$ Reduction Monetized Value ($119/t case)** | 3% | 89 | 88 | 89. |
| $NO_X$ Reduction Monetized Value (at $2,684/ton)** | 7% | 0.57 | 0.56 | 0.57. |
| | 3% | 0.97 | 0.97 | 0.98. |
| Total Benefits† | 7% plus $CO_2$ range | 46 to 127 | 44 to 125 | 48 to 129. |
| | 7% | 67 | 65 | 69. |
| | 3% plus $CO_2$ range | 67 to 148 | 63 to 144 | 70 to 151. |
| | 3% | 88 | 84 | 91. |
| **Costs** | | | | |
| Incremental Equipment Costs | 7% | 29 | 40 | 28. |
| | 3% | 37 | 53 | 36. |
| **Net Benefits/Costs** | | | | |
| Total† | 7% plus $CO_2$ range | 17 to 98 | 4 to 85 | 19 to 101. |
| | 7% | 38 | 25 | 40. |
| | 3% plus $CO_2$ range | 30 to 111 | 11 to 91 | 34 to 115. |
| | 3% | 51 | 31 | 55. |

* This table presents the annualized costs and benefits associated with SPVUs shipped in 2019–2048. These results include benefits to customers which accrue after 2048 from the products purchased in 2019–2048. Costs incurred by manufacturers, some of which may be incurred in preparation for the rule, are not directly included, but are indirectly included as part of incremental equipment costs. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices and building growth (leading to higher shipments) from the *AEO 2013* Reference case, Low Estimate, and High Estimate, respectively. In addition, incremental equipment costs reflect constant real prices for the Primary Estimate, an increase in projected equipment price trends for the Low Benefits Estimate, and a decline rate in projected equipment price trends for the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.F.2.a.

** The $CO_2$ values represent global monetized SCC values, in 2013$, in 2015 under several scenarios. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporates an escalation factor. The value for $NO_X$ (in 2013$) is an average value.[17]

† Total benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3% discount rate ($40.5/t case). In the rows labeled "7% plus $CO_2$ range" and "3% plus $CO_2$ range," the operating cost and $NO_X$ benefits are calculated using the labeled discount rate, and those values are added to the full range of $CO_2$ values.

[15] The atmospheric lifetime of $CO_2$ is estimated of the order of 30–95 years. Jacobson, MZ (2005). "Correction to "Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming." " *J. Geophys. Res.* 110. pp. D14105.

[16] All $CO_2$ and $NO_X$ results shown in this paragraph are based on emissions factors in *AEO 2013,* the most recent version available at the time of this analysis. Use of emissions factors in *AEO 2014* would result in a significant decrease in cumulative emissions reductions for $CO_2$, estimated at 33%, and an increase in $NO_X$, estimated at 13%. In the next phase of this rulemaking, DOE plans to use emissions factors based on the most recent *AEO* available, which may or may not be *AEO 2014,* depending on the timing of the issuance of the next rulemaking document.

[17] The $CO_2$ and $NO_X$ results are based on emissions factors in *AEO 2013,* the most recent version available at the time of this analysis. Use of emissions factors in *AEO 2014* would result in a significant decrease in cumulative emissions reductions for $CO_2$, estimated at 33%, and an increase in $NO_X$, estimated at 13%. In the next phase of this rulemaking, DOE plans to use emissions factors based on the most recent *AEO* available, which may or may not be *AEO 2014,* depending on the timing of the issuance of the next rulemaking document.

TABLE I.5—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR SPVUS

[EPCA baseline]

| | Discount rate | Primary estimate* | Low net benefits estimate* | High net benefits estimate* |
|---|---|---|---|---|
| | | *million 2013$/year* | | |
| **Benefits** | | | | |
| Operating Cost Savings | 7% | 80 | 76 | 83. |
| | 3% | 121 | 114 | 126. |
| $CO_2$ Reduction Monetized Value ($12.0/t case)** | 5% | 16 | 16 | 16. |
| $CO_2$ Reduction Monetized Value ($40.5/t case)** | 3% | 58 | 58 | 59. |
| $CO_2$ Reduction Monetized Value ($62.4/t case)** | 2.5% | 87 | 87 | 88. |
| $CO_2$ Reduction Monetized Value ($119/t case)** | 3% | 181 | 181 | 182. |
| $NO_X$ Reduction Monetized Value (at $2,684/ton)** | 7% | 1.2 | 1.2 | 1.2. |
| | 3% | 2.0 | 2.0 | 2.0. |
| Total Benefits† | 7% plus $CO_2$ range | 97 to 262 | 93 to 257 | 100 to 266. |
| | 7% | 139 | 135 | 143. |
| | 3% plus $CO_2$ range | 139 to 305 | 132 to 297 | 144 to 311. |
| | 3% | 182 | 174 | 187. |
| **Costs** | | | | |
| Incremental Equipment Costs | 7% | 60 | 79 | 58. |
| | 3% | 70 | 97 | 68. |
| **Net Benefits/Costs** | | | | |
| Total† | 7% plus $CO_2$ range | 37 to 203 | 14 to 179 | 42 to 208. |
| | 7% | 80 | 56 | 85. |
| | 3% plus $CO_2$ range | 68 to 234 | 35 to 199 | 76 to 243. |
| | 3% | 111 | 77 | 119. |

* This table presents the annualized costs and benefits associated with SPVUs shipped in 2019–2048. These results include benefits to customers which accrue after 2048 from the products purchased in 2019–2048. Costs incurred by manufacturers, some of which may be incurred in preparation for the rule, are not directly included, but are indirectly included as part of incremental equipment costs. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices and building growth (leading to higher shipments) from the *AEO 2013* Reference case, Low Estimate, and High Estimate, respectively. In addition, incremental equipment costs reflect constant real prices for the Primary Estimate, an increase in projected equipment price trends for the Low Benefits Estimate, and a decline rate in projected equipment price trends for the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.F.2.a.

** The $CO_2$ values represent global monetized SCC values, in 2013$, in 2015 under several scenarios. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporates an escalation factor. The value for $NO_X$ (in 2013$) is an average value.[18]

† Total benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3% discount rate ($40.5/t case). In the rows labeled "7% plus $CO_2$ range" and "3% plus $CO_2$ range," the operating cost and $NO_X$ benefits are calculated using the labeled discount rate, and those values are added to the full range of $CO_2$ values.

DOE has tentatively concluded that, based upon clear and convincing evidence, the proposed standards for the equipment classes with levels more stringent than those presented in ASHRAE Standard 90.1–2013 represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy.[19] DOE further notes that products achieving these standard levels are already commercially available for all equipment classes covered by this proposal.[20] Based on the analyses described above, DOE has tentatively concluded that the benefits of the proposed standards to the Nation (energy savings, positive NPV of customer benefits, customer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers). DOE also considered higher energy efficiency levels as trial standard levels, and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the higher energy efficiency levels would outweigh the projected benefits.

For the four equipment classes for which no models are available on the market at all, or for which there are no models with efficiency above those levels presented in ASHRAE 90.1–2013, DOE is proposing to adopt the levels in ASHRAE Standard 90.1–2013, per the statutory directive.

Based on consideration of the public comments DOE receives in response to this NOPR and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this NOPR that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

[18] The $CO_2$ and $NO_X$ results are based on emissions factors in *AEO 2013,* the most recent version available at the time of this analysis. Use of emissions factors in *AEO 2014* would result in a significant decrease in cumulative emissions reductions for $CO_2$, estimated at 33%, and an increase in $NO_X$, estimated at 13%. In the next phase of this rulemaking, DOE plans to use emissions factors based on the most recent *AEO* available, which may or may not be *AEO 2014,* depending on the timing of the issuance of the next rulemaking document.

[19] DOE based this decision to set more stringent levels by using 2013 ASHRAE as the base case.

[20] As shown in section 3.8, chapter 3 of the Technical Support Document, for equipment less than 65,000 Btu/h, there are 42 SPVAC models and 69 SPVHP models available at 11 EER or higher.

As noted previously, in compliance with EPCA, DOE based its determination to adopt more stringent standards on an analysis comparing these proposed standards with ASHRAE 2013 as the base case. DOE presents Table I.5 as requested in OMB Circular A–4.

## II. Introduction

The following section briefly discusses the statutory authority underlying this proposal, as well as some of the relevant historical background related to the establishment of standards for single package vertical air conditioners and single package vertical heat pumps.

### *A. Authority*

Title III, Part C [21] of the Energy Policy and Conservation Act of 1975 (''EPCA'' or ''the Act''), Pub. L. 94–163 (42 U.S.C. 6311–6317, as codified), added by Pub. L. 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which includes the single package vertical air conditioners and single package vertical heat pumps that are the subjects of this rulemaking.[22] In general, this program addresses the energy efficiency of certain types of commercial and industrial equipment. Relevant provisions of the Act specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labelling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

EPCA contains mandatory energy conservation standards for commercial heating, air-conditioning, and water-heating equipment. (42 U.S.C. 6313(a)) Specifically, the statute sets standards for small, large, and very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs), warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks. *Id.* In doing so, EPCA established Federal energy conservation standards that generally correspond to the levels in ASHRAE Standard 90.1, as in effect on October 24, 1992 (*i.e.,* ASHRAE Standard 90.1–1989), for each type of covered equipment listed in 42 U.S.C. 6313(a). The Energy Independence and Security Act of 2007 (EISA 2007), Pub. L. 110–240, amended EPCA by adding definitions and setting minimum energy conservation standards for single package vertical air conditioners (SPVACs) and single package vertical heat pumps (SPVHPs). (42 U.S.C. 6313(a)(10)(A)) The efficiency standards for SPVACs and SPVHPs established by EISA 2007 correspond to the levels contained in ASHRAE Standard 90.1–2004, which originated as addendum ''d'' to ASHRAE Standard 90.1–2001.

EPCA requires that DOE must conduct a rulemaking to consider amended energy conservation standards for a variety of enumerated types of commercial heating, ventilating, and air-conditioning equipment (of which SPVACs and SPVHPs are a subset) each time ASHRAE Standard 90.1 is updated with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) Such review is to be conducted in accordance with the procedures established for ASHRAE equipment under 42 U.S.C. 6313(a)(6). According to 42 U.S.C. 6313(a)(6)(A), for each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended, DOE must publish in the **Federal Register** an analysis of the energy savings potential of amended energy efficiency standards within 180 days of the amendment of ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(A)(i)) EPCA further directs that DOE must adopt amended standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more-stringent level would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) In addition, DOE notes that pursuant to the EISA 2007 amendments to EPCA, under 42 U.S.C. 6313(a)(6)(C), the agency must periodically review its already-established energy conservation standards for ASHRAE equipment. In December 2012, this provision was further amended by the American Energy Manufacturing Technical Corrections Act (AEMTCA) to clarify that DOE's periodic review of ASHRAE equipment must occur ''[e]very six years.'' (42 U.S.C. 6313(a)(6)(C)(i))

AEMTCA also modified EPCA to specify that any amendment to the design requirements with respect to the ASHRAE equipment, would trigger DOE review of the potential energy savings under U.S.C. 6313(a)(6)(A)(i). Additionally, AEMTCA amended EPCA to require that if DOE proposes an amended standard for ASHRAE equipment at levels more stringent than those in ASHRAE Standard 90.1, DOE, in deciding whether a standard is economically justified, must determine, after receiving comments on the proposed standard, whether the benefits of the standard exceed its burdens by considering, to the maximum extent practicable, the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses of the products likely to result from the standard;

(3) The total projected amount of energy savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from 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 standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant. (42 U.S.C. 6313(a)(6)(B)(ii))

EISA 2007 amended EPCA to provide an independent basis for a one-time review regarding SPVUs that is not tied to the conditions for initiating review specified by 42 U.S.C. 6313(a)(6)(A) or 42 U.S.C. 6313(a)(6)(C) described previously. Specifically, pursuant to 42 U.S.C. 6313(a)(10)(B), DOE must commence review of the most recently published version of ASHRAE Standard 90.1 with respect to SPVU standards in accordance with the procedures established under 42 U.S.C. 6313(a)(6) no later than 3 years after the enactment of EISA 2007. DOE notes that this provision was not tied to the trigger of ASHRAE publication of an updated version of Standard 90.1 or to a 6-year period from the issuance of the last final rule, which occurred on March 7, 2009 (74 FR 12058). DOE was simply obligated to commence its review by a specified date.

Because ASHRAE did not update its efficiency levels for SPVACs and SPVHPs in ASHRAE Standard 90.1–2010, DOE began this rulemaking by analyzing amended standards consistent with the procedures defined under 42 U.S.C. 6313(a)(6)(C). Specifically, pursuant to 42 U.S.C. 6313(a)(6)(C)(i)(II), DOE, must use the procedures established under subparagraph (B) when issuing a NOPR. The statutory

[21] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[22] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act, Pub. L. 112–210 (enacted December 18, 2012).

provision at 42 U.S.C. 6313(a)(6)(B)(ii), recently amended by AEMTCA, states that in deciding whether a standard is economically justified, DOE must determine, after receiving comments on the proposed standard, whether the benefits of the standard exceed its burdens by considering, to the maximum extent practicable, the following seven factors, as stated previously.

However, before DOE could finalize this NOPR, ASHRAE acted on October 9, 2013 to adopt ASHRAE Standard 90.1–2013, and this revision did contain amended standard levels for SPVUs, thereby triggering DOE's statutory obligation under 42 U.S.C. 6313(a)(6)(A) to promulgate an amended uniform national standard at those levels unless DOE determines that there is clear and convincing evidence supporting the adoption of more-stringent energy conservation standards than the ASHRAE levels. Consequently, DOE prepared an analysis of the energy savings potential of amended standards at the ASHRAE Standard 90.1 levels (as required by 42 U.S.C. 6313(a)(6)(A)(i)) and updated this NOPR and accompanying analyses to reflect appropriate statutory provision, timelines, and compliance dates.

DOE has tentatively concluded that following this rulemaking process will provide ''clear and convincing evidence'' that for two equipment classes for which the proposed standards are more stringent than those set forth in ASHRAE Standard 90.1–2013 would result in significant additional conservation of energy and would be technologically feasible and economically justified, as mandated by 42 U.S.C. 6313(a)(6). For the other four equipment classes, DOE has tentatively concluded to adopt the levels set forth in ASHRAE Standard 90.1–2013.

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313(a)(6)(B)(iii)(I)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6313(a)(6)(B)(iii)(II))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the customer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure.

Additionally, when a type or class of covered equipment such as ASHRAE equipment, has two or more subcategories, DOE often specifies more than one standard level. DOE generally will adopt a different standard level than that which applies generally to such type or class of products for any group of covered products that have the same function or intended use if DOE determines that products within such group: (A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and which justifies a higher or lower standard. In determining whether a performance-related feature justifies a different standard for a group of products, DOE generally considers such factors as the utility to the customer of the feature and other factors DOE deems appropriate. In a rule prescribing such a standard, DOE includes an explanation of the basis on which such higher or lower level was established. DOE followed a similar process in the context of this rulemaking.

*B. Background*

Single package vertical units primarily serve modular classroom buildings in educational facilities; telecommonunications and electronics enclosures; and offices and other miscellaneous commercial buildings. In almost all of these commercial building applications, the buildings served are expected to be of modular construction, because SPVUs, as packaged air conditioners installed on external building walls, do not impact site preparation costs for modular buildings, which may be relocated multiple times over the building's life. The vertically-oriented configuration of SPVUs allows the building mounting to be unobtrusive and minimizes impacts on modular building transportation requirements. These advantages do not apply to a significant extent in site-constructed buildings.

1. Current Standards

As noted above, EISA 2007 amended EPCA to establish separate equipment classes and minimum energy conservation standards for SPVACs and SPVHPs. (42 U.S.C. 6313(a)(10)(A)) DOE published a final rule technical amendment in the **Federal Register** on March 23, 2009, which codified into DOE's regulations the new SPVAC and SPVHP pump equipment classes and energy conservation standards for this equipment as prescribed by EISA 2007. 74 FR 12058. These standards apply to all SPVUs manufactured on or after January 1, 2010. The current standards are set forth in Table II.1.

TABLE II.1—CURRENT FEDERAL ENERGY CONSERVATION STANDARDS FOR SINGLE PACKAGE VERTICAL AIR CONDITIONERS AND HEAT PUMPS

| Equipment type | Cooling capacity *Btu/h* | Efficiency level |
|---|---|---|
| Single Package Vertical Air Conditioner | <65,000 Btu/h | EER = 9.0. |
| Single Package Vertical Air Conditioner | ≥65,000 Btu/h and <135,000 Btu/h | EER = 8.9. |
| Single Package Vertical Air Conditioner | ≥135,000 Btu/h and <240,000 Btu/h* | EER = 8.6. |
| Single Package Vertical Heat Pump | <65,000 Btu/h | EER = 9.0.<br>COP = 3.0. |
| Single Package Vertical Heat Pump | ≥65,000 Btu/h and <135,000 Btu/h | EER = 8.9.<br>COP = 3.0. |
| Single Package Vertical Heat Pump | ≥135,000 Btu/h and <240,000 Btu/h* | EER = 8.6.<br>COP = 2.9. |

* There are no models on the market at these cooling capacities.

2. History of Standards Rulemaking for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps

Single package vertical units were established as a separate equipment class in ASHRAE Standard 90.1 by addendum ''d'' to ASHRAE Standard 90.1–2001. DOE subsequently evaluated the possibility of creating separate equipment classes for SPVUs but determined that the Energy Policy Act of 2005 (EPACT 2005) had revised the language in 42 U.S.C. 6313(a)(6)(A)(i) [23] to limit DOE's authority to adopt ASHRAE amendments for small, large, and very large commercial package air-conditioning and heating equipment until after January 1, 2010, and thus, DOE could not adopt equipment classes and standards for SPVUs at that time. As explained in a March 2007 energy conservation standards final rule for various ASHRAE products, DOE determined that SPVUs fall under the definition of ''commercial package air conditioning and heating equipment'' (42 U.S.C. 6311(8)(A)), and that any SPVU with cooling capacities less than 760,000 Btu/h would fit within the commercial package air conditioning and heating equipment categories listed in EPCA and be subjected to their respective energy efficiency standards. 72 FR 10038, 10046–10047 (March 7, 2007).

Subsequently, EISA 2007 amended EPCA to: (1) Create separate equipment classes for SPVACs and SPVHPs; (2) set minimum energy conservation standards for these equipment classes; (3) eliminate the restriction on amendments for small, large, and very large commercial package air-conditioning and heating equipment until after January 1, 2010; and (4) instruct DOE to review the most recently published ASHRAE Standard 90.1 with respect to SPVUs no later than 3 years after the enactment of EISA 2007. As noted previously, DOE published a final rule technical amendment in the **Federal Register** which codified into DOE regulations the standards for SPVUs that were established by EISA 2007. 74 FR 12058 (March 23, 2009).

On October 29, 2010, ASHRAE officially released ASHRAE Standard 90.1–2010 to the public. As an initial step in reviewing SPVUs under EPCA, DOE published a Notice of Data Availability (NODA) on May 5, 2011, which contained potential energy savings estimates for certain industrial and commercial equipment, including SPVUs. 76 FR 25622. Although ASHRAE Standard 90.1–2010 did not update the efficiency levels for SPVUs, DOE was obligated to review the potential energy savings for these equipment classes under 42 U.S.C. 6313(a)(10)(B), as noted above. On January 17, 2012, DOE published a notice of proposed rulemaking (January 2012 NOPR) in which it proposed to incorporate by reference the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 390–2003, ''*Performance Rating of Single Package Vertical Air-Conditioners and Heat Pumps,*'' into the DOE test procedure for SPVUs and proposed an optional equipment break-in period of no more than 16 hours. 77 FR 2356. DOE also decided to conduct additional analysis for SPVUs to consider more-stringent standards. *Id.* at 2359. On May 16, 2012, DOE published a final rule which incorporated by reference AHRI Standard 390–2003 into the DOE test procedure for SPVUs and increased the maximum duration of the optional break-in period to 20 hours. 77 FR 28928. That final rule (as with the NOPR) did not contain amended standards for SPVUs, as DOE decided to consider more-stringent standards for such equipment on a separate timeline.

However, as noted before, during the course of the present rulemaking, ASHRAE acted on October 9, 2013, to adopt ASHRAE Standard 90.1–2013, and this revision did contain amended standard levels for SPVUs, thereby triggering DOE's statutory obligation to promulgate an amended uniform national standard at those levels, unless DOE determines that there is clear and convincing evidence supporting the adoption of more-stringent energy conservation standards than the ASHRAE levels. Once triggered by ASHRAE action, DOE became subject to certain new statutory requirements and deadlines. For example, the statute required DOE to publish in the **Federal Register** for comment an analysis of the energy savings potential of amended energy conservation standards at the ASHRAE Standard 90.1–2013 levels, not later than 180 days after amendment of the ASHRAE standard. DOE published this energy savings analysis as a Notice of Data Availability (NODA) in the **Federal Register** on April 11, 2014. 79 FR 20114.

Once triggered by ASHRAE action, the applicable legal deadline for completion of this standards rulemaking also shifted. When DOE first commenced this rulemaking pursuant to 42 U.S.C. 6313(a)(10)(B), that provision directed DOE to follow the procedures established under 42 U.S.C. 6313(a)(6). Because DOE had not been triggered by ASHRAE action at the time (as would necessitate use of the procedures under 42 U.S.C. 6313(a)(6)(A)), DOE proceeded as a 6-year-lookback amendment of the standard under 42 U.S.C. 6313(a)(6)(C), which called for a NOPR followed by a final rule not more than two years later. DOE was close to issuing a NOPR at the time it was triggered by ASHRAE action on Standard 90.1–2013. Once triggered, DOE was then required to either adopt the levels in ASHRAE Standard 90.1–2013 not later than 18 months after the publication of the amended ASHRAE standard (*i.e.,* by April 9, 2015), or to adopt more-stringent standards not later than 30 months after publication of the amended ASHRAE standard (*i.e.,* by April 9, 2016). However, given the advanced stage of the NOPR and DOE's rulemaking process (including analysis of the levels ultimately adopted by ASHRAE in Standard 90.1–2013), the Department plans to move as expeditiously as possible and in advance of the statutory deadlines associated with the ASHRAE trigger. With that said, this NOPR is the next step for DOE's analysis of amended energy conservation standards for SPVUs.

In developing this NOPR, DOE reviewed the 11 comments it received in response to the April 2014 NODA. Commenters included: First Co.; Lennox International Inc.; National Comfort Products (NCP); Earthjustice; Goodman Global, Inc.; California Investor-Owned Utilities (CA IOUs); GE Appliances; Appliance Standards Awareness Project (ASAP), the American Council for an Energy-Efficient Economy (ACEEE), the National Resources Defense Council (NRDC), and the Northwest Energy Efficiency Alliance (jointly referred to as the Advocates); Daikin Applied; Edison Electric Institute (EEI); and Air-Conditioning, Heating & Refrigeration Institute (AHRI). All comments relevant to SPVU (as opposed to the other products discussed in the April 2014 NODA) are discussed in this NOPR.

In general, AHRI, Lennox International, Goodman Global, Daikin Applied, and EEI recommended that DOE should adopt the ASHRAE 90.1–2013 values as minimum standards for all considered equipment, including SPVUs. (AHRI, No. 24 at p. 1, Lennox International Inc., No. 15 at p. 2; Goodman Global, Inc., No. 18 at p. 4; Daikin Applied, No. 22 at p. 1; EEI, No. 23 at p. 2) In contrast, the CA IOUs, as well as the Advocates stated that the DOE should adopt more-stringent levels for certain equipment types, including SPVU, because of the potential energy

[23] The relevant language in 42 U.S.C. 6313(a)(6)(A)(i) was subsequently revised by EISA 2007 to remove the reference to January 1, 2010.

savings. (CA IOUs, No. 19 at pp. 2–3; The Advocates, No. 21 at p. 1)

After careful consideration of the public comments and the available information, DOE has tentatively decided to propose energy conservation standards more stringent than those set forth in ASHRAE Standard 90.1–2013 for two SPVU equipment classes and to propose adoption of the levels set forth in ASHRAE Standard 90.1–2013 for the remaining four SPVU equipment classes. Comments specific to individual issues or analyses are discussed in the relevant sections that follow.

## III. General Discussion

### *A. Compliance Dates*

As noted above, this rulemaking was initiated pursuant to an EISA 2007 amendment to EPCA that requires DOE to conduct a one-time review of the standard levels for SPVUs under the procedures established in paragraph (6) of 42 U.S.C. 6313(a). (42 U.S.C. 6313(a)(10)(B)) Paragraph (6) contains a number of possible compliance dates for any resulting amended standards, which vary depending on the type of equipment, the triggering mechanism for DOE review (*i.e.,* whether DOE is triggered by a revision to ASHRAE Standard 90.1 or by the ''6-year look back'' requirement), and the action taken (*i.e.,* whether DOE is adopting ASHRAE Standard 90.1 levels or more-stringent levels). The discussion below explains the potential compliance dates as they pertain to the present rulemaking.

Under the first relevant provision, EPCA requires that when ASHRAE Standard 90.1 is amended with respect to certain commercial equipment, DOE must amend its minimum standards to either adopt levels equivalent to the ASHRAE Standard 90.1 levels, or to adopt more-stringent levels. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE adopts the ASHRAE Standard 90.1 levels as Federal standard levels, compliance with the amended Federal standards is required either two or three years from the effective date of the ASHRAE Standard 90.1 level, depending on the equipment type. (42 U.S.C. 6313(a)(6)(D)) For small commercial package air-conditioning and heating equipment, PTACs, PTHPs, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks, compliance is required two years after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE Standard 90.1. For large and very large commercial package air-conditioning and heating equipment, compliance is required three years after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE Standard 90.1. If DOE adopts more-stringent standard levels than the levels contained in the amended ASHRAE Standard 90.1 for any type of equipment, compliance is required four years after the date such final rule is published in the **Federal Register.** *Id.*

Under the second relevant provision, EPCA requires that at least once every 6 years, DOE must review standards for covered equipment and publish either a notice of determination that standards do not need to be amended or a NOPR proposing new standards. (42 U.S.C 6313(a)(6)(C)) For any NOPR published pursuant to 42 U.S.C. 6313(a)(6)(C), the final rule would apply on the date that is the later of either 3 years after publication of the final rule establishing a new standard, or 6 years after the effective date of the current standard for a covered product. (42 U.S.C. 6313(a)(6)(C)(iv)).

In the context of the current rulemaking, when DOE first commenced the rulemaking process, ASHRAE had not released a full revision of ASHRAE Standard 90.1 that revises the minimum energy efficiency requirements for SPVUs. Thus, DOE initially determined the procedural requirements of 42 U.S.C. 6313(a)(6)(C) to be applicable, and accordingly, DOE anticipated a compliance date of 2017, or 3 years after the expected publication of the final rule in 2014.[24]

However, as DOE expected might happen, ASHRAE released a revision of ASHRAE Standard 90.1 on October 9, 2013, consistent with its recent practice of releasing a full revision of ASHRAE Standard 90.1 every 3 years. Because this revision increased the energy efficiency requirements for SPVUs in ASHRAE Standard 90.1, DOE was triggered to act on the ASHRAE Standard 90.1 levels for SPVUs pursuant to 42 U.S.C. 6313(a)(6)(A), and consequently, this rulemaking will simultaneously satisfy the requirements of 42 U.S.C. 6313(a)(6)(A), 42 U.S.C. 6313(a)(6)(C), and 42 U.S.C. 6313(a)(10)(B). However, in this case, DOE believes that the statutory lead time for compliance under such circumstances must ultimately be dictated by the requirements of 42 U.S.C. 6313(a)(6)(A), given that there is now an ''ASHRAE trigger'' upon which DOE is acting. Thus, DOE will use the compliance dates specified under 42 U.S.C. 6313(a)(6)(D) for analyzing amended standards in the final rule. More specifically, if DOE adopts the ASHRAE Standard 90.1–2013 levels for certain SPVU equipment classes, as proposed, the applicable compliance date would be two or three years after the effective date of the applicable ASHRAE standard, depending on equipment size (*i.e.,* by October 9, 2015 or October 9, 2016).[25] If DOE adopts more-stringent standards for certain other SPVU equipment classes, as proposed, the applicable compliance date would be four years after publication of the final rule in the **Federal Register.**

### *B. Equipment Classes and Scope of Coverage*

When evaluating and establishing energy conservation standards, DOE divides covered products into equipment classes by the type of energy used or by capacity or other performance-related features that justifies a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE determines are appropriate.

Existing energy conservation standards group SPVUs into the following six equipment classes based on the cooling capacity and whether the equipment is an air conditioner or a heat pump:

TABLE III.1—EQUIPMENT CLASSES FOR SINGLE PACKAGE VERTICAL UNITS

| Equipment type | Cooling capacity *Btu/h* |
|---|---|
| Single Package Vertical Air Conditioners. | <65,000.<br>≥65,000 and <135,000.<br>≥135,000 and <240,000. |

[24] 2017 is the later date compared to the alternative of 6 years after the effective date of the current standard, which would be 2016 (as the current SPVU standards became effective in 2010).

[25] Under 42 U.S.C. 6313(a)(6)(D)(i), the applicable compliance date when DOE adopts the ASHRAE standard levels for small commercial package air conditioning and heating equipment (including SPVACs and SPVHPs under 135,000 Btu/h) is two years after the effective date of the minimum energy efficiency requirements in the amended ASHRAE Standard 90.1. Under 42 U.S.C. 6313(a)(6)(D)(ii), the applicable compliance date when DOE adopts the ASHRAE standard levels for large and very large commercial package air conditioning and heating equipment (including SPVACs and SPVHPs ≥ 135,000 Btu/h and < 240,000 Btu/h) is three years after the effective date of the minimum energy efficiency requirement in the amended ASHRAE Standard 90.1.

TABLE III.1—EQUIPMENT CLASSES FOR SINGLE PACKAGE VERTICAL UNITS—Continued

| Equipment type | Cooling capacity *Btu/h* |
|---|---|
| Single Package Vertical Heat Pumps. | <65,000.<br>≥65,000 and <135,000.<br>≥135,000 and <240,000. |

10 Code of Federal Regulations (CFR) 431.97(d).

1. Consideration of a Space Constrained SPVU Equipment Class

In the April 2014 NODA, DOE noted that ASHRAE Standard 90.1–2013 created a new equipment class for SPVACs and SPVHPs used in space-constrained applications, with a definition for ''nonweatherized space constrained single-package vertical unit'' and efficiency standards for the associated equipment class. In the NODA, DOE tentatively concluded that there was no need to establish a separate space-constrained class for SPVUs, given that certain models currently listed by manufacturers as SPVUs, most of which would meet the ASHRAE space-constrained definition, are being misclassified and should be classified as central air conditioners (in most cases, space-constrained central air conditioners). 79 FR 20114, 20123 (April 11, 2014).

In response to the April 2014 NODA, AHRI and NCP requested that DOE adopt the new ASHRAE 90.1–2013 space-constrained SPVU product class. (AHRI, No. 24 at pp. 1–2; NCP, No. 16 at p. 3) First Co. disagreed with DOE's conclusion that space-constrained SPVUs should be regulated as consumer products rather than commercial equipment and stated that increasing energy conservation standards for SPVU should be done by changing EER/COP, as ASHRAE has done, not by reclassifying them as consumer products. (First Co. No. 14 at p. 1)

DOE does not agree with these commenters and has provided responses to specific concerns below.

Lennox and NCP stated that multi-family structures above 3 stories are considered commercial buildings by both EPCA and ASHRAE Standard 90.1. (Lennox International, No. 15 at p. 4; NCP, No. 16 at pp. 7–8) AHRI added that hotels, apartments, and dormitories are all commercial applications in building types falling within the scope of ASHRAE Standard 90.1. (AHRI, No. 24 at p. 4) NCP argued that SPVUs are distributed to a significant extent for commercial applications, including commercial lodging such as student housing and dormitories, nursing homes, assisted care facilities, hotels, and high-rise apartment buildings. (NCP, No. 16 at p. 10) GE, Lennox, and AHRI analogized that many SPVU are distributed in the same market segments as PTAC/PTHP, which is a type of commercial equipment. (GE Appliances, No. 20 at p. 2; Lennox International, No. 15 at p. 4; AHRI, No. 24 at p. 4)

GE, Lennox, and AHRI stated that SPVU are sold to commercial entities and that consumers are never involved in those sale transactions. (GE Appliances, No. 20 at p. 2; Lennox International, No. 15 at p. 5; AHRI, No. 24 at p. 5) Lennox added that SPVUs (including space-constrained models) involve a much higher degree of design integration than residential split system central air conditioners. (Lennox International, No. 15 at p. 5) NCP argued that while SPVUs may be used temporarily by individual occupants, over their life, they are owned and maintained by the commercial entities that own the buildings. (NCP, No. 16 at p. 7) NCP also added that characterizing SPVUs used in lodging as consumer products is going overbroad, because it overlooks the energy use constraints of various multi-family building configurations. (NCP, No. 16 at p. 3)

DOE notes that the definitions for ''consumer product'' and ''industrial equipment'' in EPCA are not dependent on the definition of residential or commercial buildings found elsewhere in EPCA or in ASHRAE Standard 90.1. As discussed in the April 2014 ASHRAE NODA, EPCA defines ''industrial equipment'' as any article of equipment of certain specified types that consumes, or is designed to consume, energy, which is distributed to any significant extent for industrial and commercial use, and which is not a covered product as defined in 42 U.S.C. 6291(2),[26] without regard to whether such article is in fact distributed in commerce for industrial or commercial use. (42 U.S.C. 6311(2)(A)) EPCA defines ''consumer product'' as any article: (1) Of a type that consumes or is designed to consume energy, and, to any significant extent, is distributed in commerce for personal use or consumption by individuals, (2) without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual. (42 U.S.C. 6291(1))

Consistent with the NODA and these relevant statutory provisions, DOE maintains that products serving individual rooms in multi-family and lodging applications is for personal use or consumption by individuals, regardless of who designed the system, was involved in the sale transaction, or maintains the equipment. In addition, DOE found similarities between units designed for multi-family applications and those intended for commercial lodging applications, indicating that those products should be treated the same under DOE's regulatory scheme.

Furthermore, the definitions of ''industrial equipment'' and ''consumer product'' are mutually exclusive. A product can only be considered commercial/industrial equipment under EPCA if it does not fit the definition of consumer product. PTACs, referenced by stakeholders as commercial equipment with applications similar to space-constrained SPVUs, are not relevant to this argument because the definition for ''central air conditioner'' explicitly excludes PTACs (*see* 42 U.S.C. 6291(21)). Therefore, DOE differentiates these situations, because while many of the products that would meet the ASHRAE definition for a space-constrained SPVU would also meet the EPCA definition for central air conditioner, PTACs cannot meet the latter definition because they are explicitly excluded.

Lennox and AHRI stated that in the November 4, 2013 proposed rule, ''Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Test Procedures for Residential and Commercial Water Heaters,'' (78 FR 66202), DOE recognized that there are commercial water heaters that ''could have residential applications,'' yet DOE specifically chose not to treat that equipment as a consumer covered product because it would be distributed to a (more) significant extent as a commercial product. (Lennox International, No. 15 at p. 5; AHRI, No. 24 at p. 5) NCP agreed that DOE should regulate SPVU in the same manner as DOE recently proposed for light commercial water heaters. (NCP, No. 16 at p. 10) Lennox International, AHRI, and NCP all maintain that SPVUs are used to a significant extent in commercial applications and more rarely in residential applications. (Lennox International, No. 15 at p. 5; AHRI, No. 24 at p. 5; NCP, No. 16 at p. 10)

To clarify this issue, DOE provides the following excerpt from the November 2013 NOPR, along with additional information. The specific

[26] The term ''covered product'' means a consumer product of a type specified in section 6292 of this title. (42 U.S.C. 6291(2)) Central air conditioners and central air conditioning heat pumps are listed as a covered product in section 6292. (42 U.S.C. 6292(a)(3))

reference from the November 2013 NOPR is as follows: ''Although light commercial water heaters could have residential applications, DOE notes that the new 'light commercial water heater' definition represents a type of water heater that, to a significant extent, is distributed in commerce for industrial or commercial use. These water heaters were and continue to be covered industrial equipment, and, if these proposals are finalized, will continue to be subject to the regulations in part 431 and the certification requirements for commercial and industrial equipment in part 429.'' 78 FR 66202, 66207 (Nov. 4, 2013). One must keep in mind that EPCA's definition addressing various types of ''water heater[s]'' contains specific limitations on the input capacities for such models to be considered consumer products. (42 U.S.C. 6291(27); codified at 10 CFR 430.2) DOE further notes that the proposed definition for ''light commercial water heater'' makes the equipment a subtype of commercial water heater. 78 FR 66202, 66207 (Nov. 4, 2013). Commercial storage and instantaneous water heaters are specifically listed in EPCA as a type of industrial equipment at 42 U.S.C. 6313(1)(K) and defined at 42 U.S.C. 6311(12), and there are a number of related definitions in DOE's regulations (*see* 10 CFR 431.102). Therefore, under the statutory scheme, equipment can only be classified as a ''light commercial water heater'' if it does not meet the definition of a ''water heater'' under 10 CFR 430.2. In the same way, space-constrained SPVUs can only be classified as industrial equipment if they do not meet the definition of ''central air conditioner'' or any other covered consumer product.

Lennox, NCP, and AHRI also referred to the history of SPVUs, stating that all SPVUs were previously classified as central air conditioners; the product class was not introduced in ASHRAE Standard 90.1 until the 2004 version and not established in EPCA until EISA 2007, which explicitly separated out SPVUs as type of covered equipment. (NCP, No. 16 at p. 9; Lennox International, No. 15 at p. 3; AHRI, No. 24 at pp. 3–4) NCP and Lennox added that EISA 2007 specified that SPVACs include equipment that is mounted ''through an outside wall,'' expressly contemplating space-constrained units. (NCP, No. 16 at p. 9; Lennox International, No. 15 at pp. 2–3) NCP commented that in an October 2000 NOPR (65 FR 59590, 59610 (Oct. 5, 2000)), DOE proposed creating standards for SPVUs as a niche product, noting that SPVUs ''are not distributed for personal use or consumption by individuals, and therefore believes that at present they are commercial products. . . .'' NCP added that the NOPR (*Id.*) acknowledged that ''the difficult air flow configuration . . . combined with the attempt to minimize the size constrains the ability of these units to attain higher SEERs.'' (NCP, No. 16 at p. 9)

DOE disagrees that all SPVUs were classified as residential central air conditioners prior to EISA 2007. Traditional (non-space constrained) SPVU units and three-phase units would have been classified either as commercial air conditioners or not covered. Furthermore, in the April 2014 NODA, DOE was referring to products classified as through-the-wall (TTW) until January 23, 2010 (when TTW was removed as a product class and TTW products had to meet the regulatory requirements for other central air conditioner product classes). 79 FR 20114, 20121–23 (April 11, 2014). In regards to the intent of EISA 2007 and the October 2000 NOPR, DOE notes that before ASHRAE released Addendum ''i'' to Standard 90.1–2010 in March 2011, there was no such thing as a space-constrained SPVU equipment class. Prior to that time, any references to SPVUs were in regards to traditional units that were not limited in size. Consistent with DOE's position in the October 2000 NOPR, EISA 2007 added SPVUs as a type of commercial equipment, but Congress declined to distinguish a separate equipment class for space-constrained SPVUs. DOE notes that the October 2000 NOPR also considered niche products called ''through-the-wall condensers,'' which were proposed for a separate residential product class.[27] 65 FR 59590, 59610 (Oct. 5, 2000). It is in this product class that DOE expressly contemplated residential space-constrained units, including those models previously classified as TTW that manufacturers are now attempting to classify as SPVUs. DOE does not believe the design, market, and application for these space-constrained units has changed substantially over the past 10 years. In fact, DOE believes the space-constrained products are properly classified, as they were once certified, as central air conditioners, a practice which changed only when the TTW product class was combined with the space-constrained product class and compliance with amended standards for these product classes was required. Based upon the above reasoning, DOE does not see a basis or a need for the space-constrained SPVU equipment class, as these basic models are already covered products as space-constrained central air conditioners. Any product that meets the definition of a ''consumer product'' (42 U.S.C. 6291(1)) is classified as a consumer product and must meet any applicable energy conservation standard, regardless of whether it is used in a commercial application or marketed as commercial equipment.

Lennox and AHRI asserted that the existing base of SPVU products in commercial buildings with fixed physical-dimension requirements limits the ability of manufacturers to increase efficiency; this was the reason for ASHRAE's development of the space-constrained SPVU equipment class. (Lennox International No. 15 at p. 5; AHRI No. 24 at p. 5) NCP stated that lodging and commercial SPVACs are configured for ease of access and maintenance, which impacts efficiency. (NCP, No. 16 at pp. 7–8) NCP added that the presence of multiple units venting to the outside also would affect an individual unit's ultimate performance. (NCP, No. 16 at p. 7) Lennox commented that space-constrained SPVU cannot meet the efficiency levels of residential units. (Lennox International, No. 15 at pp. 5–6)

DOE notes that while equipment meeting the ASHRAE Standard 90.1 definition of a space-constrained SPVU may in fact be constrained in efficiency, the presence of the space-constrained central air conditioner (CAC) equipment class already provides respite for these products. The SEER requirement for space-constrained CAC is 12 SEER, one point below the current standards for CAC and two points below the standard for some CACs (split system CACs in the South and all single package CACs) beginning January 1, 2015. (10 CFR 430.32(c)(1)-(3)) Furthermore, DOE notes that there are currently space-constrained units on the market that meet the 12 SEER requirement.

NCP argued that if DOE excludes equipment used in high-rise multi-family or other commercial lodging applications from the SPVAC class, DOE must establish a new equipment class because such equipment does not qualify as CAC or otherwise fall within any other existing category. (NCP, No. 16 at p. 10) Specifically, NCP stated that their Comfort Pack products cannot be classified as CAC because they always

[27] A TTW product class was created in a May 2002 final rule (67 FR 36368 (May 23, 2002)) and was replaced by the residential space-constrained product class in a June 2011 Direct Final Rule (76 FR 37408, (June 27, 2011)).

include gas or electric resistance heat. (NCP, No. 16 at pp. 5–6)

In response to NCP, EPCA defines ''central air conditioner'' as a product, other than a packaged terminal air conditioner, which: (1) Is powered by single phase electric current; (2) is air-cooled; (3) is rated below 65,000 Btu per hour; (4) is not contained within the same cabinet as a furnace with a rated capacity above 225,000 Btu per hour; and (5) is a heat pump or a cooling only unit. (42 U.S.C. 6291(21); 10 CFR 430.2) DOE notes that criteria number 5 refers to coverage of both a type of air conditioner unit that can only perform cooling (*i.e.,* a ''cooling only unit'') as well as a type of air conditioner unit that can perform both cooling and heating (*i.e.,* a ''heat pump''). Criteria number 5 does not refer to other components such as a furnace or electric heater. The only heating component that excludes equipment from coverage under this definition is a furnace with a rated capacity above 225,000 Btu/hour, as set forth in criteria number 4. DOE notes that for units meeting the definition of ''central air conditioner'' and also containing a furnace in the package (with a rated capacity under 225,000 Btu/hour), the air conditioner is subject to one set of energy conservation standards, while the furnace may be subject to separate standards.

First Co. stated that its commercially-designed SPVHPs cannot be tested under the HSPF test procedure because they cannot be operated at temperatures required for testing Frost Accumulation or Low Temperature. (First Co., No. 14 at p. 2)

In response to First Co., DOE notes that whether a product can be tested in accordance with the test procedure is not typically determinative of whether it meets the product's definition. Instead, the characteristics of the product (as outlined above for central air conditioning) determine whether it meets the definition. If a product that meets the definition cannot be tested in accordance with the test procedure, a manufacturer may apply to DOE for a waiver of the test procedure..

AHRI and GE Appliances stated that all models of SPVUs listed in the AHRI Directory meet the requirement of having components arranged vertically and current models of space-constrained SPVU meet the EPCA definition of ''SPVU.'' (AHRI, No. 24 at pp. 3–4; GE Appliances, No. 20 at pp. 1–2) NCP reasoned that by ''arranged vertically,'' DOE intends to address products that operate in a vertical manner, with a bottom ''return air'' opening and a top ''supply air'' opening. This configuration is commonly referred to within the industry as an ''Upflow'' unit. In addition, for NCP Comfort Pack units, the gas furnace or electrical heating component is positioned vertically above the cooling component and along the vertically moving air flow. Accordingly, NCP's products are vertically arranged as contemplated by the EPCA. (NCP, No. 16 at pp. 4–5)

In response, the EPCA definition for ''SPVU'' requires that the major components be arranged vertically. (42 U.S.C. 6311(22)(A)(i); 10 CFR 431.92) In the April 2014 NODA, when stating that some models do not have their components arranged vertically, DOE was referring to units in which all components were on the same horizontal plane within the cabinet. 79 FR 20114, 20122 (April 11, 2014). DOE acknowledges that most of the products in the AHRI database do have their components arranged vertically. However, even if the units in the AHRI database have their components arranged vertically and otherwise meet the definition of ''SPVU,'' they may also meet the definition of an applicable consumer product, which takes precedence, as discussed previously.

For all of the reasons discussed in this section, DOE is maintaining the position on space-constrained units that it outlined in the April 2014 NODA. Specifically, DOE has not identified a need to establish a separate space-constrained class for SPVUs, given that certain units currently listed by manufacturers as SPVUs, most of which would meet the ASHRAE space-constrained definition, are being misclassified and are appropriately classified as central air conditioners (in most cases, space-constrained central air conditioners).

Lennox and AHRI stated that DOE should expand the applications considered in the analysis; AHRI specified that in addition to office, education, and telecom, DOE should consider lodging, multi-family, and assisted-living applications. (Lennox International No. 15 at p. 7; AHRI No. 24 at p. 6) DOE notes that the applications used in the analysis apply to traditional (non-space constrained) SPVUs. DOE believes that the additional applications suggested by Lennox and AHRI are primarily related to space-constrained applications. Given that DOE is not considering the space-constrained units to be SPVUs, DOE has not included the additional applications in its analysis.

*Issue 1:* DOE seeks comment on its tentative conclusion that the creation of a space-constrained equipment class for SPVUs is not warranted.

*C. Technological Feasibility*

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv). Section IV.B of this preamble discusses the results of the screening analysis for SPVUs, particularly the designs DOE considered, those it screened out, and those that are the basis for the trial standard levels (TSLs) in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR Technical Support Document (TSD).

After screening out or otherwise removing from consideration most of the technologies, the following technologies were identified for consideration in the engineering analysis: (1) Increased frontal coil area; (2) increased depth of coil; (3) improved fan motor efficiency; (4) improved fan blade efficiency; and (5) improved compressor efficiency, and (6) dual condensing heat exchangers. To adopt standards for SPVUs that are more stringent than the efficiency levels in ASHRAE Standard 90.1 as amended, DOE must determine, supported by clear and convincing evidence, that such standards are technologically feasible. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) Since these six design options are commercially available, have been used in SPVU equipment, and are the most common ways by which manufacturers improve the energy efficiency of their

SPVUs, DOE has tentatively determined that clear and convincing evidence supports the conclusion that all of the efficiency levels evaluated in this NOPR are technologically feasible.

Additionally, DOE notes that the four screening criteria do not directly address the propriety status of design options. DOE only considers efficiency levels achieved through the use of proprietary designs in the engineering analysis if they are not part of a unique path to achieve that efficiency level (*i.e.,* if there are other non-proprietary technologies capable of achieving the same efficiency). DOE believes the proposed standards for the equipment covered in this rulemaking would not mandate the use of any proprietary technologies, and that all manufacturers would be able to achieve the proposed levels through the use of non-proprietary designs. DOE seeks comment on this tentative conclusion and requests additional information regarding proprietary designs and patented technologies.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for SPVUs, using the design parameters for the most efficient products available on the market or in working prototypes. (See chapter 5 of the NOPR TSD.) The max-tech levels that DOE determined for this rulemaking are described in section IV.C.1 of this proposed rule.

*D. Energy Savings*

1. Determination of Savings

For each TSL, DOE projected energy savings from the products that are the subject of this rulemaking purchased in the 30-year period that begins in the year of compliance with amended standards (2015–2044 for the ASHRAE level, and 2019–2048 for higher efficiency levels). The savings are measured over the entire lifetime of products purchased in the 30-year analysis period.[28] DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and both base cases. The base case represents a projection of energy consumption in the absence of amended mandatory energy conservation standards, and it considers market forces and policies that affect demand for more-efficient products.

DOE used its national impact analysis (NIA) spreadsheet model to estimate energy savings from amended standards for the products that are the subject of this rulemaking. The NIA spreadsheet model (described in section IV.G of this preamble) calculates energy savings in site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings in terms of the savings in the energy that is used to generate and transmit the site electricity. To calculate this quantity, DOE derived annual conversion factors from the model used to prepare the Energy Information Administration's (EIA) *Annual Energy Outlook 2013* (*AEO 2013*).[29]

DOE has begun to also estimate full-fuel-cycle energy savings, as discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51281 (August 18, 2011), as amended at 77 FR 49701 (August 17, 2012). The full-fuel-cycle (FFC) metric includes the energy consumed in extracting, processing, and transporting primary fuels, and, thus, presents a more complete picture of the impacts of energy efficiency standards. DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered equipment. See section IV.G.1.a for further discussion.

2. Significance of Savings

Among the criteria that govern DOE's adoption of more-stringent standards for SPVUs than the amended levels in ASHRAE Standard 90.1, clear and convincing evidence must support a determination that the standards would result in ''significant'' additional energy savings. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) Although the term ''significant'' is not defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended ''significant'' energy savings in this context to be savings that were not ''genuinely trivial.'' DOE's estimates of the energy savings for each of the TSLs considered for the proposed rule for SPVUs <65,000 Btu/h (presented in section V.B.3.a) provide evidence that the additional energy savings each would achieve by exceeding the corresponding efficiency levels in ASHRAE Standard 90.1–2013 are nontrivial. Therefore, DOE considers these savings to be ''significant'' as required by 42 U.S.C. 6313(a)(6)(A)(ii)(II).

*E. Economic Justification*

1. Specific Criteria

As discussed beforehand, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts a manufacturer impact analysis (MIA), as discussed in section IV.I. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step incorporates both a short-term impacts—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term impacts over a 30-year period.[30] The industry-wide impacts analyzed include: (1) Industry net present value (INPV), which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on sub-groups manufacturers, such as impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment, as discussed in section IV.M. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

[28] In the past, DOE presented energy savings results for only the 30-year period that begins in the year of compliance. In the calculation of economic impacts, however, DOE considered operating cost savings measured over the entire lifetime of products purchased in the 30-year period. DOE has chosen to modify its presentation of national energy savings to be consistent with the approach used for its national economic analysis.

[29] Conversion factors based on the *Annual Energy Outlook 2014* (*AEO 2014*), which became available too late for incorporation into this analysis, show very little change compared to the *AEO 2013*-based factors. DOE plans to use convresion factors based on the most recent *AEO* available for the next phase of this rulemaking, which may or may not be *AEO 2014,* depending on the timing of the issuance of the next rulemaking document.

[30] DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

For individual consumers, measures of economic impact include the changes in life-cycle cost (LCC) and payback period (PBP) associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the economic impacts applicable to a particular rulemaking. DOE also evaluates the LCC impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a national standard.

b. Savings in Operating Costs Compared to Increase in Price (Life-Cycle Costs)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product compared to any increase in the price of the covered product that are likely to result from the imposition of the standard. (42 U.S.C. 6313(a)(6)(B)(ii)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a piece of equipment (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the equipment. To account for uncertainty and variability in specific inputs, such as equipment lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value. For its analysis, DOE assumes that consumers will purchase the covered equipment in the first year of compliance with amended standards.

The LCC savings and the PBP for the considered efficiency levels are calculated relative to a base case that reflects projected market trends in the absence of amended standards. DOE identifies the percentage of consumers estimated to receive LCC savings or experience an LCC increase, in addition to the average LCC savings associated with a particular standard level. DOE's LCC analysis is discussed in further detail in section IV.F.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6313(a)(6)(B)(ii)(III)) As discussed in section IV.G, DOE uses the NIA spreadsheet to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing classes of products, and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6313(a)(6)(B)(ii)(IV)) Based on data available to DOE, the proposed standards would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition that is likely to result from energy conservation standards. It also directs the Attorney General of the United States (Attorney General) to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6313(a)(6)(B)(ii)(V)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE will publish and address the Attorney General's determination in the final rule.

f. Need for National Energy Conservation

In evaluating the need for national energy conservation, DOE expects that the energy savings from the proposed standards are likely to provide improvements to the security and reliability of the nation's energy system. (42 U.S.C. 6313(a)(6)(B)(ii)(VII)) Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity, as discussed in section IV.L.

The proposed standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production. DOE reports the emissions impacts from the proposed standards, and from each TSL it considered, in section IV.J of this preamble. DOE also reports estimates of the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.K.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6313(a)(6)(B)(ii)(VII))

2. Rebuttable Presumption

EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for customers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test.

In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to customers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6313(a)(6)(B)(ii). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section V.B.1.c of this proposed rule.

## IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regards to SPVACs and SPVHPs. A separate subsection addresses each component of the analysis.

### *A. Market and Technology Assessment*

To start the rulemaking analysis for SPVACs and SPVHPs, DOE researched information that provided an overall picture of the market for this equipment, including the purpose of the equipment, the industry structure, manufacturers, market characteristics, and technologies used in the equipment. This activity included both quantitative and qualitative assessments based primarily on publically-available information. The topics addressed in this market and technology assessment for the rulemaking include definitions, equipment classes, manufacturers, quantities, and types of equipment sold and offered for sale. The key findings of

DOE's market assessment are summarized below. For additional detail, see chapter 3 of the NOPR TSD.

1. Definitions of a SPVAC and a SPVHP

EPCA defines ''single package vertical air conditioner'' and ''single package vertical heat pump'' in 42 U.S.C. 6311(23) and (24). In particular, these units can be single or three-phase; must have major components arranged vertically; must be an encased combination of components; and must be intended for exterior mountain on, adjacent interior to, or through an outside wall. DOE codified these definitions into its regulations at 10 CFR 431.92. Certain of these equipment types are sometimes referred to as ''wall-mount'' units and are commonly installed on the exterior wall of classrooms, modular office buildings, and telecom shelters. Certain others of these units are also sometimes found installed in the interior wall of classrooms, such as in a utility closet. These units are beneficial because they provide each room with individual temperature control, and because in the event of a failure of the system, only one room would be affected as opposed to the whole space.

2. Equipment Classes

In evaluating and establishing energy conservation standards, DOE divides covered equipment into equipment classes based on the type of energy used or by capacity or other performance-related feature that justifies having a higher or lower standard from that which applies to other equipment classes.

EPCA currently divides both SPVACs and SPVHPs into 3 size categories and sets a Federal minimum energy efficiency standard for each equipment class. During its research for the market and technology assessment, DOE did not find any performance-related features that would justify creating a new equipment class for SPVUs. Accordingly, for this rulemaking, DOE is proposing to maintain the same equipment classes, as shown in Table IV.1.

TABLE IV.1—CURRENT FEDERAL EQUIPMENT CLASSES FOR SPVUS

| Equipment class | Size category (Btu/h) |
|---|---|
| SPVAC ..... | <65,000. |
| | ≥65,000 and <135,000. |
| | ≥135,000 and <240,000. |
| SPVHP ..... | <65,000. |
| | ≥65,000 and <135,000. |
| | ≥135,000 and <240,000. |

3. Refrigerants

Since January 1st, 2010, all newly manufactured SPVUs in the United States have no longer been allowed to use the previously-prevalent R–22 refrigerant per the Montreal Protocol. As result, the vast majority of SPVUs began using R410A refrigerant instead. DOE is aware of one alternative refrigerant, R407C, which can be used as a replacement for R410A in SPVUs. DOE is aware of some SPVUs which utilize R407C; however, these units are not offered for sale in the United States and therefore are not included among the products potentially regulated by this rule.

4. Review of the Current Market for SPVUs

In order to gather information needed for the market assessment for SPVUs, DOE consulted a variety of sources, including manufacturer literature, manufacturer Web sites, and the AHRI Directory of Certified Product Performance. This information served as resource material throughout the rulemaking. The sections below provide an overview of the SPVU market. For more detail on the SPVU market, see chapter 3 of the NOPR TSD.

a. Trade Association Information

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) is the trade association representing SPVU manufacturers. AHRI develops and publishes technical standards for residential and commercial air-conditioning, heating, and refrigeration equipment using rating criteria and procedures for measuring and certifying equipment performance. The current Federal test procedure for SPVUs incorporates by reference an AHRI standard—AHRI 390–2003, ''Performance Rating of Single Package Vertical Air-Conditioners and Heat Pumps.'' AHRI also maintains the Directory of Certified Product Performance, which is a database of equipment ratings for all manufacturers who elect to participate in the program. AHRI has two subsections for SPVUs: (1) Single Package Vertical Systems—AC; and (2) Single Package Vertical Systems—HP. DOE used the data in this certification directory in its market assessment.

b. Manufacturer Information

For SPVUs, DOE identified seven manufacturers: (1) Bard Manufacturing Company; (2) Change'Air; (3) Johnson Controls, Inc.; (4) Marvair; (5) Modine Manufacturing Company; (6) National Coil Company; and (7) Temspec, Inc. DOE also identified certain other companies that list their products in the AHRI Directory, but DOE believes that these models are residential products and not commercial equipment. Therefore, DOE did not include those manufacturers in this list.

*Issue 2:* DOE seeks comment on whether there are additional companies not named which manufacture this type of equipment.

DOE also takes into consideration the impact of amended energy conservation standards on small businesses. At this time, DOE has identified one small business (Bard Manufacturing Company) in the SPVU market that fall under the Small Business Administration (SBA)'s threshold as having 750 employees or fewer. DOE studies the potential impacts on these small businesses in detail during the manufacturer impact analysis (MIA). A summary of these impacts is contained in section IV.I and VI.B of this NOPR and described in further detail in chapter 12 of the NOPR TSD.

c. Market Data

From the AHRI Directory and manufacturers' Web sites, DOE compiled a database of 319 SPVACs and 270 SPVHPs. Of the 589 total SPVUs, DOE was able to gather efficiency data on 497 units (about 86 percent of DOE's database). DOE was not able to find any units on the market for SPVAC or SPVHP equipment with a cooling capacity greater than or equal to 135,000 Btu/h and less than 240,000 Btu/h and for SPVHP with a cooling capacity greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h. For more information on the SPVU equipment currently available on the market, including a full breakdown of these units into their equipment classes and graphs showing performance data, see chapter 3 of the NOPR TSD.

5. Technology Assessment

In the technology assessment, DOE identifies technology options that appear to be feasible mechanisms for improving equipment efficiency. This assessment provides the technical background and structure on which DOE bases its screening and engineering analyses.

DOE began its technology assessment by examining SPVUs that are currently on the market at both the baselines and higher efficiency levels. This allowed DOE to identify technologies that are commonly incorporated into equipment to achieve higher efficiencies, as well as the impact of certain components and improvements on SPVU efficiency. DOE also researched technology options that are utilized in other air-conditioning

and refrigeration equipment to determine their potential applicability to SPVUs. Lastly, DOE explored the market and technical information to identify technologies that have not yet come to market but that are under development and to determine whether those technologies have the potential to improve SPVU efficiency. Although DOE does consider technologies that are proprietary, it does not consider efficiency levels that can only be reached through the use of proprietary technologies, which could allow a single manufacturer to monopolize the market (any such technologies are eliminated during the engineering analysis). Through these methods, DOE identified numerous technologies that could improve the energy efficiency of SPVUs.

Generally, these technologies involve improvements to either the heat exchangers or to the other system components that will improve the overall energy efficiency of the system. First, DOE identified technologies that improve the heat exchanger effectiveness, which included: (1) Increased frontal coil area; (2) increased depth of coil (additional tube rows); (3) increased fin density; (4) improved fin design; (5) improved tube design; (6) hydrophilic film coating on fins; (7) changing to microchannel heat exchangers; and (8) dual condensing heat exchangers. Second, DOE identified technologies that improve the efficiency of other components that make up the rest of the system, including: (1) Improved indoor and outdoor fan motor efficiency; (2) improved fan blade efficiency; (3) improved compressor efficiency (including multi-speed compressors); (4) thermostatic or electronic expansion valves; and (5) thermostatic cyclic controls. All of these technology options are presented in Table IV.2.

TABLE IV.2—POTENTIAL TECHNOLOGY OPTIONS FOR IMPROVED ENERGY EFFICIENCY OF SPVUS

| Technology Options | |
|---|---|
| Heat Exchanger Improvements | Increased frontal coil area.<br>Increased depth of coil.<br>Increased fin density.<br>Improved fin design.<br>Improved tube design.<br>Hydrophilic film coating on fins.<br>Microchannel heat exchangers.<br>Dual condensing heat exchangers. |
| Indoor Blower and Outdoor Fan Improvements | Improved fan motor efficiency.<br>Improved fan blades. |
| Compressor Improvements | Improved compressor efficiency.<br>Multi-speed Compressors. |
| Other Improvements | Thermostatic expansion valves.<br>Electronic expansion valves.<br>Thermostatic cyclic controls. |

Chapter 3 of the NOPR TSD provides additional detail and descriptions of the basic construction and operation of SPVUs, followed by a detailed discussion of each of the technology options discussed in the preceding paragraph. After identifying technology options that will improve the efficiency of SPVUs, DOE passed each of those technology options to the screening analysis for further evaluation.

*B. Screening Analysis*

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

1. *Technological feasibility.* DOE will consider technologies incorporated in commercial products or in working prototypes to be technologically feasible.

2. *Practicability to manufacture, install, and service.* If mass production and reliable installation and servicing of a technology in commercial products could be achieved on the scale necessary to serve the relevant market at the time the standard comes into effect, then DOE will consider that technology practicable to manufacture, install, and service.

3. *Adverse impacts on product utility or product availability.* If DOE determines a technology would have a significant adverse impact on the utility of the product to significant subgroups of consumers, or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not consider this technology further.

4. *Adverse impacts on health or safety.* If DOE determines that a technology will have significant adverse impacts on health or safety, it will not consider this technology further.

(10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b))

These four screening criteria do not include the propriety status of design options. As noted previously, DOE will only consider efficiency levels achieved through the use of proprietary designs in the engineering analysis if they are not part of a unique path to achieve that efficiency level. DOE does not believe that any of the technologies identified in the technology assessment are proprietary, and thus, did not eliminate any technologies for that reason. Through a review of each technology, DOE found that the technologies identified met all four screening criteria to be examined further in the analysis.

Typically, technologies that pass the screening analysis are subsequently passed through to the engineering analysis for consideration in DOE's downstream cost-benefit analysis. However, DOE did not analyze some of the technologies identified in the technology assessment because either: (1) Data are not available to evaluate the energy efficiency characteristics of the technology; (2) available data suggest that the efficiency benefits of the technology are negligible; or (3) the test procedure and EER or COP metric would not measure the energy impact of these technologies. Accordingly, DOE eliminated the following technologies from further consideration based upon these three additional considerations:

(1) Increased fin density
(2) Improved fin design;
(3) Improved tube design;
(4) Hydrophilic film coating on fins;

(5) Thermostatic or electronic expansion valves;

(6) Thermostatic cyclic controls;

(7) Microchannel heat exchangers; and

(8) Multi-speed compressors.

Of these technologies, numbers 1 through 4 are used in baseline products, so no additional energy savings would be expected. Any potential energy savings of technologies 5, 6, or 8 cannot be measured with the established energy use metrics (EER and COP) because those technologies are associated with part-load performance, which is not captured in the EER or COP metrics used for rating SPVUs. Information indicating efficiency improvement potential in SPVUs is not available for technology number 7.

*Issue 3:* DOE requests comment on its elimination of these technologies from consideration based upon the criteria discussed above.

After screening out or otherwise removing from consideration most of the technologies, the following technologies were identified for consideration in the engineering analysis: (1) Increased frontal coil area; (2) increased depth of coil; (3) improved fan motor efficiency; (4) improved fan blade efficiency; (5) improved compressor efficiency, and (6) dual condensing heat exchangers.

Chapter 4 of the NOPR TSD contains additional details on the screening analysis.

*C. Engineering Analysis*

The engineering analysis establishes the relationship between an increase in energy efficiency of the equipment and the increase in manufacturer selling price (MSP) associated with that efficiency level. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the Nation. DOE typically structures its engineering analysis using one of three approaches: (1) Design-option; (2) efficiency-level; or (3) reverse engineering (or cost-assessment). A design-option approach identifies individual technology options (from the market and technology assessment) that can be used alone or in combination with other technology options to increase the energy efficiency of a unit of equipment. Under this approach, cost estimates of the baseline equipment and more-efficient equipment that incorporates design options are based on manufacturer or component supplier data or engineering computer simulation models. Individual design options, or combinations of design options, are added to the baseline model in descending order of cost-effectiveness. An efficiency-level approach establishes the relationship between manufacturer cost and increased efficiency at predetermined efficiency levels above the baseline. Under this approach, DOE typically assesses increases in manufacturer cost for incremental increases in efficiency, without identifying the technology or design options that would be used to achieve such increases. A reverse-engineering, or cost-assessment, approach involves disassembling representative units of SPVACs and SPVHPs, and estimating the manufacturing costs based on a ''bottom-up'' manufacturing cost assessment; such assessments use detailed data to estimate the costs for parts and materials, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.

DOE conducted this engineering analysis for SPVUs using a combination of the efficiency level and cost-assessment approaches for analysis of the EER and COP efficiency levels. More specifically, DOE identified the efficiency levels for the analysis based on market data and then used the cost-assessment approach to determine the manufacturing costs at those levels.

1. Efficiency Levels for Analysis

The engineering analysis first identifies representative baseline equipment, which is the starting point for analyzing potential technologies that provide energy efficiency improvements. ''Baseline equipment'' refers to a model or models having features and technologies typically found in the least-efficient equipment currently available on the market. Based on market data, DOE identified 36,000 Btu/h (3-ton) as the representative cooling capacity for SPVACs and SPVHPs with a cooling capacity less than 65,000 Btu/h, and DOE identified 72,000 (6-ton) as the representative cooling capacity for SPVACs and SPVHPs with a cooling capacity greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h. In the case of SPVUs with a cooling capacity less than 65,000 Btu/h, 3-ton represents the cooling capacity with the most models in the database for SPVACs and SPVHPs. For SPVACs with a cooling capacity greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h, 6-ton represents the most common size for that equipment class. DOE did not find any models of SPVHPs greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h on the market. DOE did not find any SPVUs on the market with cooling capacities greater than or equal to 135,000 Btu/h and less than 240,000 Btu/h.

Next, using the information DOE gathered during the market and technology assessment, DOE selected higher efficiency levels for analysis for these representative cooling capacities based on the most common equipment efficiencies on the market and identified typical technologies and features incorporated into equipment at these higher efficiency levels. DOE also selected the highest efficiency level on the market for each equipment class (*i.e.*, the max-tech level). To determine the appropriate coefficient of performance (COP) levels for SPVHPs, DOE performed an analysis of how COP relates to energy efficiency ratio (EER). DOE reviewed the models in the database it compiled, and for each equipment class, DOE calculated the median COP for each EER efficiency level for analysis. Table IV.3 and Table IV.4 below list the efficiency levels for analysis for SPVUs. Because DOE found no equipment on the market for SPVUs with cooling capacities ≥135,000 Btu/h and <240,000 Btu/h, DOE did not analyze any efficiency levels for those equipment classes.

TABLE IV.3—EFFICIENCY LEVELS FOR ANALYSIS FOR SPVUS <65,000 BTU/H

| Efficiency level | SPVAC, 36,000 Btu/h | SPVHP, 36,000 Btu/h |
|---|---|---|
| EPCA Baseline [31] | 9.0 EER | 9.0 EER. 3.0 COP. |
| ASHRAE Baseline [32]. | 10.0 EER | 10.0 EER. 3.0 COP. |
| EL1 | 10.5 EER | 10.5 EER. 3.2 COP. |
| EL2 | 11.0 EER | 11.0 EER. 3.3 COP. |
| EL3 | 11.75 EER | 11.75 EER. 3.9 COP. |
| EL4 (max-tech) | 12.3 EER | 12.3 EER. 3.9 COP. |

TABLE IV.4—EFFICIENCY LEVELS FOR ANALYSIS FOR SPVUS ≥65,000 BTU/H AND <135,000 BTU/H

| Efficiency level | SPVAC, 72,000 Btu/h | SPVHP, 72,000 Btu/h |
|---|---|---|
| EPCA Baseline | 8.9 EER | 8.9 EER. 3.0 COP. |

[31] Refers to the currently-applicable federal minimum efficiency level. See *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/35.*

[32] Refers to the current minimum efficiency permitted by the latest version of the ASHRAE standard, ASHRAE 90.1–2013.

TABLE IV.4—EFFICIENCY LEVELS FOR ANALYSIS FOR SPVUs ≥65,000 BTU/H AND <135,000 BTU/H—Continued

| Efficiency level | SPVAC, 72,000 Btu/h | SPVHP, 72,000 Btu/h |
|---|---|---|
| ASHRAE Baseline (max-tech). | 10.0 EER | 10.0 EER. 3.0 COP. |

*Issue 3:* DOE seeks comment on the EER and COP pairings for SPVHPs and its method of deriving the pairings.

2. Teardown Analysis

After selecting a representative capacity and efficiency level for each equipment class, DOE selected equipment near both the representative cooling capacity and the selected efficiency levels for its teardown analysis. DOE gathered information from these teardowns to create a detailed bill of materials (BOMs) that included all components and processes used to manufacture the equipment. To assemble the BOMs and to calculate the manufacturing product costs (MPCs) of SPVUs, DOE disassembled multiple units into their base components and estimated the materials, processes, and labor required for the manufacture of each individual component, a process known as a ''physical teardown.'' Using the data gathered from the physical teardowns, DOE characterized each component according to its weight, dimensions, material, quantity, and the manufacturing processes used to fabricate and assemble it.

DOE also used a supplementary method called a ''virtual teardown,'' which examines published manufacturer catalogs and supplementary component data to estimate the major differences between a unit of equipment that was physically disassembled and a similar unit of equipment that was not. For virtual teardowns, DOE gathered product data such as dimensions, weight, and design features from publicly-available information, (*e.g.*, manufacturer catalogs and manufacturer Web sites). DOE also obtained information and data not typically found in catalogs, such as fan motor details or assembly details, from physical teardowns of similar equipment or through estimates based on industry knowledge. The teardown analysis included 14 physical and virtual teardowns of SPVUs.

The teardown analysis allowed DOE to identify the technologies that manufacturers typically incorporate into their equipment, along with the efficiency levels associated with each technology or combination of technologies. The end result of each teardown is a structured BOM, which DOE developed for each of the physical and virtual teardowns. The BOMs incorporate all materials, components, and fasteners (classified as either raw materials or purchased parts and assemblies) and characterize the materials and components by weight, manufacturing processes used, dimensions, material, and quantity. The BOMs from the teardown analysis were then used as inputs to the cost model to calculate the MPCs for each type of equipment that was torn down. The MPCs resulting from the teardowns were then used to develop an industry average MPC for each equipment class analyzed. See chapter 5 of the NOPR TSD for more details.

During the development of this engineering analysis, DOE held interviews with manufacturers to gain insight into the SPVU industry and to request feedback on the engineering analysis and assumptions that DOE used. DOE used the information it gathered from those interviews, along with the information obtained through the teardown analysis, to refine the assumptions and data in the cost model. For additional detail on the teardown process, see chapter 5 of the NOPR TSD.

During the teardown process, DOE gained insight into the typical design options manufacturers use to reach specific efficiency levels. DOE can also determine the efficiency levels at which manufacturers tend to make major technological design changes. For this engineering analysis, DOE assumed that manufacturers will switch from a permanent-split capacitor (PSC) indoor motor to a brushless permanent magnet (BPM) motor to achieve the 10 EER level, which was consistent with DOE observations during the physical teardowns. As a result, the engineering results at 10 EER (and higher levels) include the cost of a BPM blower motor. This assumption is further supported by data gathered during the market assessment. In the market assessment, DOE found that at 10 EER, there is a slightly higher number of models with BPM motors than with PSC motors. However, DOE found that most of the models (18 out of 21 models) using a PSC motor at 10 EER are gas-heat units, which DOE estimates make up a small percentage (<4%) of total SPVU shipments. A breakdown of the number of models on the market with BPM and PSC motors, as well as market share estimates of SPVUs with gas-heat, can be found in Chapter 3 of the NOPR TSD (Market and Technology Assessment).

After considering the information gathered during the market assessment and observed during the teardown process, DOE concluded that BPM motors tend to be the dominant blower design option for SPVU manufacturers when reaching the 10 EER level. This assumption is accounted for in the engineering results at the 10 EER level and higher levels, as well as in the energy use characterization and, consequently, in the downstream analyses. For more information on the design options DOE considered at each efficiency level, see chapter 3 of the NOPR TSD.

*Issue 4:* DOE seeks comment as to whether switching to a BPM motor at 10 EER represents the most probable option of achieving that efficiency level.

3. Cost Model

DOE developed a manufacturing cost model to estimate the manufacturing production cost of SPVUs. The cost model is a spreadsheet model that converts the materials and components in the BOMs into dollar values based on the price of materials, average labor rates associated with fabrication and assembling, and the cost of overhead and depreciation, as determined based on manufacturer interviews and DOE expertise. To convert the information in the BOMs into dollar values, DOE collected information on labor rates, tooling costs, raw material prices, and other factors. For purchased parts, the cost model estimates the purchase price based on volume-variable price quotations and detailed discussions with manufacturers and component suppliers. For fabricated parts, the prices of raw metal materials (*e.g.*, tube, sheet metal) are estimates on the basis of five-year averages (from 2006 to 2011). The cost of transforming the intermediate materials into finished parts is estimated based on current industry pricing. Additional details on the cost model are contained in chapter 5 of the NOPR TSD.

4. Manufacturing Production Costs

Once the cost estimates for all the components in each teardown unit were finalized, DOE totaled the cost of materials, labor, and direct overhead used to manufacture each type of equipment in order to calculate the manufacturing production cost. The total cost of the equipment was broken down into two main costs: (1) The full manufacturing production cost, referred to as MPC; and (2) the non-production cost, which includes selling, general, and administration (SG&A) costs; the cost of research and development; and interest from borrowing for operations

or capital expenditures. DOE estimated the MPC at each efficiency level considered for each equipment class, from the baseline through the max-tech level. The incremental increases in MPC over the EPCA baseline efficiency level for each subsequently higher efficiency level are shown in Table IV.5. After incorporating all of the assumptions into the cost model, DOE calculated the percentages attributable to each element of total production costs (*i.e.*, materials, labor, depreciation, and overhead). These percentages are used to validate the assumptions by comparing them to manufacturers' actual financial data published in annual reports, along with feedback obtained from manufacturers during interviews. DOE uses these production cost percentages in the MIA.

The MPCs were initially developed in 2011$. To update the MPCs to 2013$, DOE multiplied the costs by the ratio of the mid-year producer price index (PPI) in 2011 to the mid-year PPI in 2013. For SPVACs, DOE used the PPI for ''unitary air-conditioners, except for air source heat pumps'' (PCU333415333415E),[33] and similarly, the SPVHP costs were updated using the PPI for ''heat pumps'' (PCU333415333415H), which can be found on the Bureau of Labor Statistics Web site.[34]

TABLE IV.5—INCREMENTAL MPC INCREASES

| Equipment type | EPCA baseline | ASHRAE baseline | EL1 | EL2 | EL3 | EL4 |
|---|---|---|---|---|---|---|
| SPVAC <65,000 Btu/h | ..... | $274.63 | $343.35 | $412.06 | $616.89 | $1,001.24 |
| SPVAC ≥65,000 Btu/h and <135,000 Btu/h | ..... | 381.65 | ..... | ..... | ..... | ..... |
| SPVHP <65,000 Btu/h | ..... | 315.51 | 394.45 | 473.39 | 708.71 | 1,150.27 |
| SPVHP ≥65,000 Btu/h and <135,000 Btu/h | ..... | 438.45 | ..... | ..... | ..... | ..... |

5. Cost-Efficiency Relationship

The result of the engineering analysis is a cost-efficiency relationship. DOE created a separate cost-efficiency relationship at the representative cooling capacity for each of the four equipment classes analyzed. DOE reported the MPCs in aggregated form to maintain confidentiality of sensitive component data. DOE obtained input from manufacturers during the manufacturer interview process on the MPC estimates and assumptions to confirm their accuracy. For SPVACs with a cooling capacity <65,000 Btu/h, DOE performed physical teardowns and supplemented that with virtual teardowns to develop cost-efficiency relationships for each manufacturer and then created a market-share-weighted relationship based on approximate market share data obtained during the manufacturer interviews. For SPVACs with a cooling capacity ≥65,000 Btu/h and <135,000 Btu/h, DOE performed virtual teardowns of a 6-ton SPVAC and determined the average percentage increase in cost from a 3-ton SPVAC to a 6-ton SPVAC. Then, DOE scaled the 3-ton cost-efficiency curve by that average percentage increase in cost. Likewise for SPVHPs with a cooling capacity <65,000 Btu/h, DOE performed a physical teardown and compared the average percentage increase in cost of a 3-ton SPVHP compared to a 3-ton SPVAC. DOE applied this average percentage increase in cost to the cost-efficiency curve for both SPVACs with a cooling capacity <65,000 Btu/h and SPVACs with a cooling capacity ≥65,000 Btu/h and <135,000 Btu/h to get the respective cost-efficiency curves for the SPVHP equipment class.

In order to develop the cost-efficiency relationships for SPVUs, DOE examined the cost differential to move from one efficiency level to the next for each manufacturer. DOE used the results of the teardowns on a market-share weighted average basis to determine the industry average cost increase to move from one efficiency level to the next. Additional detail on how DOE developed the cost-efficiency relationships and related results are available in chapter 5 of the NOPR TSD. Chapter 5 of the NOPR TSD also presents these cost-efficiency curves in the form of energy efficiency versus MPC.

*Issue 5:* DOE seeks comment on its derivation of the cost-efficiency curves for SPVHPs and SPVACs with a cooling capacity ≥65,000 Btu/h and <135,000 Btu/h.

6. Manufacturer Markup

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the full MPC. The resulting manufacturer selling price (MSP) is the price at which the manufacturer can recover all production and non-production costs and earn a profit. To meet new or amended energy conservation standards, manufacturers often introduce design changes to their equipment lines that result in increased MPCs. Depending on the competitive pressures, some or all of the increased production costs may be passed from manufacturers to retailers and eventually to customers in the form of higher purchase prices. As production costs increase, manufacturers typically incur additional overhead. The MSP should be high enough to recover the full cost of the equipment (*i.e.*, full production and non-production costs) and yield a profit. The manufacturer markup has an important bearing on profitability. A high markup under a standards scenario suggests manufacturers can readily pass along the increased variable costs and some of the capital and product conversion costs (the one-time expenditure) to customers. A low markup suggests that manufacturers will not be able to recover as much of the necessary investment in plant and equipment.

DOE normally develops the manufacturer markup through an examination of corporate annual reports and Securities and Exchange Commission (SEC) 10–K reports; however, in the case of SPVU manufacturers, DOE did not feel this process would be representative of the majority of the industry, because most SPVU manufacturers are privately-held companies. Therefore, DOE based the manufacturer markup for the SPVU industry on the markup used for the package terminal air conditioner and package terminal heat pump final rule published on in the **Federal Register** on October 7, 2008 (73 FR 58772), and sought manufacturer feedback on this markup number during the interview process. DOE used the PTAC manufacturer markup because it is a comparable industry to the SPVU

[33] From *http://www.bls.gov/news.release/ppi.htm*, ''current price indexes grouped by industry according to the North American Industry Classification System (NAICS) have series identifiers that begin with the prefix ''PCU.'' After the prefix, there are twelve digits (the six-digit industry code is listed twice) followed by up to seven alphanumeric characters identifying product detail.'' The air-conditioning, refrigeration, and forced air heating equipment industry is identified by NAICS with the code 333415.

[34] See *http://www.bls.gov/ppi/*.

industry in terms of the size of the market (*i.e.*, the number of annual shipments) and the types of the equipment on the market (*i.e.*, both are commercial air conditioners of similar capacities). Based on manufacturer feedback during the interviews, DOE determined that the manufacturer markup used in the PTAC and PTHP final rule (1.29) was slightly high for use with SPVU manufacturers. Thus, DOE lowered the estimated average manufacturer markup for the SPVU industry to 1.28 based on the feedback received. See chapter 6 of the NOPR TSD for additional details.

7. Shipping Costs

Manufacturers of heating, ventilation, and air-conditioning (HVAC) equipment typically pay for shipping to the first step in the distribution chain. Freight is not a manufacturing cost, but because it is a substantial cost incurred by the manufacturer, DOE is accounting for shipping costs of SPVUs separately from other non-production costs that comprise the manufacturer markup. To calculate the MSP for SPVUs, DOE multiplied the MPC at each efficiency level (determined from the cost model) by the manufacturer markup and added shipping costs for equipment at the given efficiency level. More specifically, DOE calculated shipping costs at each efficiency level based on the average outer dimensions of equipment at the given efficiency and assuming the use of a typical 53-foot straight-frame trailer with a storage volume of 4,240 cubic feet.

In this rulemaking, shipping costs for SPVUs were determined on an area basis. These products are typically too tall to be double-stacked in a vertical fashion, and they cannot be shipped in any other orientation other than vertical. During interviews, manufacturers agreed with this approach and stated that the compressor and heat exchangers are more likely to be damaged in transit if they are oriented in any direction other than vertical. To calculate these shipping costs, DOE calculated the cost per area of a trailer, based on an estimated cost of $4,000 per shipping load and the standard dimensions of a 53-foot trailer (which would approximate the cost of shipping the equipment across the country). Next, DOE examined the average sizes of equipment in each equipment class at each efficiency level. DOE then estimated the shipping costs by multiplying the equipment area by the respective cost per area on the trailer. DOE updated the shipping costs to 2013$ by using a general gross domestic product (GDP) deflator.[35] Chapter 5 of the NOPR TSD contains additional details about DOE's shipping cost assumptions and DOE's shipping cost estimates.

8. Manufacturer Interviews

As noted in the preceding section, throughout the rulemaking process, DOE has sought and continues to seek feedback and insight from interested parties that would improve the information used in its analysis. DOE interviewed manufacturers as part of the NOPR manufacturer impact analysis. During the interviews, DOE sought feedback on all aspects of its analyses for SPVUs. For the engineering analysis, DOE discussed the analytical assumptions and estimates, cost model, and cost-efficiency curves with SPVU manufacturers. DOE considered all the information manufacturers provided when refining the cost model and assumptions. However, DOE incorporated data and information specific to individual manufacturers into the analysis as averages in order to avoid disclosing sensitive information about individual manufacturers' equipment or manufacturing processes. More detail about the manufacturer interviews are contained in chapter 12 of the NOPR TSD.

*D. Markups Analysis*

DOE understands that the price of SPVU equipment depends on the distribution channel the customer uses to purchase the equipment. Typical distribution channels for most commercial HVAC equipment include shipments that may pass through manufacturers' national accounts, or through entities including wholesalers, mechanical contractors, and/or general contractors. However, DOE understands that there are multiple branched distribution channels for SPVU equipment for both new construction and replacement equipment. For SPVU equipment, the new equipment distribution channel is one in which SPVU equipment is sold directly or indirectly to manufacturers of wood and non-wood modular buildings, and the rest of the supply chain is essentially the chain of manufacturing, wholesaling, and contractor support for wood and non-wood modular buildings. The distribution channel for replacement equipment goes directly, or through air conditioning wholesalers/distributors, to mechanical contractors who install replacements on behalf of customers, or to wholesalers/distributors of modular buildings, who own leased fleets of modular buildings and who are assumed to perform their own SPVU replacements in their leased fleets.

DOE developed supply chain markups in the form of multipliers that represent increases above equipment purchase costs for air-conditioning equipment wholesalers/distributors, modular building manufacturers and wholesalers/distributors, and mechanical contractors and general contractors working on behalf of customers. DOE applied these markups (or multipliers) to each distribution channel entity's costs that were developed from the engineering analysis. DOE then added sales taxes and installation costs (where appropriate) to arrive at the final installed equipment prices for baseline and higher-efficiency equipment. (See chapter 6 of the NOPR TSD for additional details on markups.) As noted above, DOE identified two separate distribution channels for SPVU equipment to describe how the equipment passes from the equipment manufacturer to the customer, as presented in Table IV.6 below.

TABLE IV.6—DISTRIBUTION CHANNELS FOR SPVU EQUIPMENT

| *Channel 1* New SPVU Equipment | *Channel 2* Replacement SPVU Equipment |
|---|---|
| Air-Conditioning Wholesale Distributor or Manufacturer's Representative. | Air-Conditioning Wholesale Distributor or Manufacturer's Representative. |

[35] U.S. Department of Commerce, Bureau of Economic Analysis (BEA), Implicit Price Deflators for Gross Domestic Product (Available in Section 1, Table 1.1.9 at *http://www.bea.gov/national/nipaweb/DownSS2.asp*) (Last accessed February 7, 2014).

TABLE IV.6—DISTRIBUTION CHANNELS FOR SPVU EQUIPMENT—Continued

| *Channel 1* New SPVU Equipment | *Channel 2* Replacement SPVU Equipment |
|---|---|
| Modular Building Manufacturer | Mechanical Contractor or Modular Building Distributor. |
| Modular Building Distributor or General Contractor. | |
| Customer | Customer. |

DOE estimated a baseline markup and an incremental markup. DOE defined a ''baseline markup'' as a multiplier that converts the manufacturer selling price of equipment with baseline efficiency into the customer purchase price for the equipment at the same baseline efficiency level. An ''incremental markup'' is defined as the multiplier to convert the incremental increase in manufacturer selling price of higher-efficiency equipment into the customer purchase price for the same (higher-efficiency) equipment.

DOE developed the markups based on available financial data. More specifically, DOE based the air-conditioning wholesaler/distributor markups on data from the Heating, Air Conditioning, and Refrigeration Distributors International (HARDI) 2013 Profit Report.[36] DOE also used financial data from the 2007 U.S. Census Bureau [37] for the wood [38] and non-wood [39] modular building manufacturing industries; concrete product manufacturing sector; [40] the wood [41] and non-wood [42] modular building wholesale industries; brick, stone, and related construction material merchant wholesalers; [43] the plumbing, heating, and air-conditioning contractor industry; [44] and the non-residential general contractor industries [45] to estimate markups for all of these sectors.

The overall markup is the product of all the markups (baseline or incremental) for the different steps within a distribution channel plus sales tax. DOE calculated sales taxes based on 2013 State-by-State sales tax data reported by the Sales Tax Clearinghouse.[46] Because both distribution channel costs and sales tax vary by State, DOE allowed markups due to distribution channel costs and sales taxes within each distribution channel to vary by State. No information was available to develop State-by-State distributions of SPVU equipment by building type or business type, so the distributions of sales by business type are assumed to be the same in all States. The national distribution of the markups varies among business types. Chapter 6 of the NOPR TSD provides additional detail on markups.

*Issue 6:* Because the identified market channels are complex and their characterization required a number of assumptions, DOE seeks input on its analysis of market channels for the above equipment classes.

*E. Energy Use Analysis*

Based on information received from manufacturer interviews, DOE believes that approximately 35 percent of SPVAC shipments go to educational facilities, the majority of which are for space conditioning of modular classroom buildings. Another approximately 35 percent of the shipments go to providing cooling for telecommunications and electronics enclosures. The remainder of shipments (30 percent) is used in a wide variety of commercial buildings, including offices, temporary buildings, and some miscellaneous facilities. In almost all of these commercial building applications, the buildings served are expected to be of modular construction, because SPVUs, as packaged air conditioners installed on external building walls, do not impact site preparation costs for modular buildings, which may be relocated multiple times over the building's life. The vertically-oriented configuration of SPVUs allows the building mounting to be unobtrusive and minimizes impacts on modular building transportation requirements. These advantages do not apply to a significant extent in site-constructed buildings. DOE also believes that shipments of SPVHP equipment would primarily be to educational facilities or office-type end uses, but would be infrequently used for telecommunication or electronic enclosures for which the heating requirements are often minimal.

DOE analyzed energy use in three different classes of commercial buildings that utilize SPVU equipment: (1) Modular classrooms; (2) modular offices; and (3) telecommunications shelters. To estimate the energy use of SPVU equipment in these building

[36] Heating, Air-conditioning & Refrigeration Distributors International (HARDI), 2013 Profit Report (2012 Data) (Available at: *http://www.hardinet.org/Profit-Report*).

[37] The U.S. Census Bureau conducts an Economic Census every five years. The 2012 Economic Census is may become available early in 2015; if so, the final rule analysis will be updated with data from the 2012 Economic Census.

[38] U.S. Census Bureau. 2007. Prefabricated Wood Building Manufacturing. Sector 32: 321992. Table EC073111 Manufacturing: Industry Series: Detailed Statistics by Industry for the United States: 2007. (Available at *http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?ref=top&refresh=t#none*).

[39] U.S. Census Bureau. 2007. Prefabricated Metal Building and Component Manufacturing. Sector 33: 332311. EC073111 Manufacturing: Industry Series: Detailed Statistics by Industry for the United States: 2007 (Available at *http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?ref=top&refresh=t#none*).

[40] U.S. Census Bureau. 2007. Other Concrete Product Manufacturing Sector 32: 327390. EC073111 Manufacturing: Industry Series: Detailed Statistics by Industry for the United States: 2007 (Available at: *http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?ref=top&refresh=t#none*).

[41] U.S. Census Bureau. 2007. 423310 Lumber, plywood, millwork, and wood panel merchant wholesalers. EC0742SXSB06. Wholesale Trade: Subject Series—Misc Subjects: Gross Margin and its Components for Merchant Wholesalers for the United States: 2007 (Available at: *http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?ref=top&refresh=t#none*).

[42] U.S. Census Bureau. 2007. 423390. Other construction material merchant wholesalers. EC0742SXSB06. Wholesale Trade: Subject Series—Misc Subjects: Gross Margin and its Components for Merchant Wholesalers for the United States: 2007 (Available at: *http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?ref=top&refresh=t#none*).

[43] U.S. Census Bureau. 2007. Brick, stone, and related construction material merchant wholesalers: 2007. Sector 42: 423320 Other Construction Material Merchant Wholesalers. Brick, stone, and related construction material merchant wholesalers: Merchant wholesalers, except manufacturers' sales branches and offices. Detailed Statistics by Industry for the United States: 2007 (Available at: *http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?ref=top&refresh=t#none*).

[44] U.S. Census Bureau. 2007. Sector 23: 238220. Plumbing, heating, and air-conditioning contractors. EC0723I1: Construction: Industry Series: Preliminary Detailed Statistics for Establishments: 2007 (Available at: *http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?ref=top&refresh=t#none*).

[45] U.S. Census Bureau. 2007. Sector 23: 236220. Commercial and institutional building construction. EC0723I1: Construction: Industry Series: Preliminary Detailed Statistics for Establishments: 2007 (Available at: *http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?ref=top&refresh=t#none*).

[46] The Sales Tax Clearing House (2013) (Last accessed Feb. 7, 2014) (Available at: *www.thestc.com/STrates.stm*).

types, DOE developed building simulation models for use with DOE's EnergyPlus software.[47] A prototypical building model was developed for each building type, described by the building footprint, general building size, and design. The building types were represented by a 1,568 ft² wood-frame modular classroom, a 1,568 ft² wood-frame modular office, and a 240 ft² concrete-wall telecommunication shelter. In each case, the building construction (footprint, window-wall ratio, general design) was developed to be representative of typical designs within the general class of building. Operating schedules, internal load profiles, internal electric receptacle (plug) loads, and occupancy for the modular classroom were those from classroom-space-type data found in the DOE Primary School commercial prototype building model.[48] Operating schedules, internal load profiles, internal plug loads, and occupancy for modular office buildings were those from office space in the DOE Small Office commercial prototype building model. *Id.* For the telecommunications shelters, DOE did not identify a source for typical representative internal electronic loads as a function of building size, nor did it find information on representative internal gain profiles. However, based on feedback from shelter manufacturers, DOE used a 36,000 Btu/h (10.55 kW) peak internal load to reflect internal design load in the shelter. DOE determined that on average over the year, this load ran at a scheduled 65 percent of peak value, reflecting estimates for computer server environments.[49] Each of these three building models was used to establish the energy usage of SPVAC and SPVHP equipment in the same building class.

Envelope performance (*e.g.*, wall, window, and roof insulation, and window performance) and lighting power inputs were based on requirements in ASHRAE Standard 90.1–2004.[50] DOE believes that the requirements in ASHRAE Standard 90.1–2004 are sufficiently representative of a mixture of both older and more recent construction [51] and that resulting SPVU equipment loads will be representative of typical SPVU equipment loads in the building stock. Ventilation levels were based on ASHRAE Standard 62.1–2004.[52]

DOE simulated each building prototype in each of 237 U.S. climate locations, taking into account variation in building envelope performance for each climate as required by ASHRAE 90.1–2004. For simulations used to represent the less than 65,000 Btu/h SPVU equipment, no outside air economizers were assumed for the modular office and modular classroom buildings.[53] However, for simulations used to represent greater than or equal to 65,000 Btu/h but less than 135,000 Btu/h equipment, economizer usage was presumed to be climate-dependent in these building types, based on ASHRAE Standard 90.1–2004 requirements for unitary equipment in that capacity range. For the telecommunications shelters, economizers were assumed for 45 percent of buildings, based on manufacturer interviews. In response to the April 2014 NODA and DOE's request for information on the use of economizers in telecommunications shelters, Lennox International stated their belief that economizers would be used in a majority of equipment serving this market. The commenter pointed out that ASHRAE Standard 90.1 now requires the use of economizers in HVAC equipment greater than 54,000 Btu/h in all but two climate zones. Lennox stated that this change in ASHRAE Standard 90.1 has driven this economizer requirement to over 90 percent of units shipped for the telecommunications shelter application (Lennox International Inc., No. 15 at p. 7).

In response, DOE's understanding is that the 54,000 Btu/h limit introduced in ASHRAE Standard 90.1–2010 is for comfort cooling applications and that ASHRAE Standard 90.1 has separate economizer requirements for computer rooms (generally defined as a space where the primary function is to house equipment for processing of electronic data and which has a design electronics power density exceeding 20 W/sf—as would be typical of a telecommunication shelter).[54] These computer room economizer requirements begin to require economizers only for fan cooling units greater than or equal to 65,000 Btu/h and at that threshold only for certain climate zones. The comfort cooling requirements in ASHRAE Standard 90.1, to the extent they are adopted by local jurisdictions, would appear not to apply to telecommunications shelters. And, if such requirements were to apply, they would do so only for a fraction of the products in the less than 65,000 Btu/h SPVU market. Additionally, manufacturers generally agreed during manufacturer interviews that approximately 45 percent of SPVUs that are shipped for telecommunications shelters contain economizers. For these reasons, in this NOPR, DOE still assumed that 45 percent of these buildings used economizers, and requests further information regarding the percentage of SPVUs in telecommunication shelters that use economizers. Users of the SPVU LCC spreadsheet can change the percentage of equipment using economizers to see the impact of different weights. In addition, for the telecommunication shelter, redundant identical air conditioners with alternating usage were assumed when establishing average annual energy consumption per unit.

Simulations were done for the buildings using SPVAC equipment and electric resistance heating, and then a separate set of simulations was done for buildings with SPVHP equipment. For each equipment type and building type combination, DOE simulated each efficiency level identified in the engineering analysis for each equipment class. Fan power at these efficiency levels was based on manufacturer's literature and reported fan power consumption data as developed in the engineering analysis. BPM supply air blower motors were assumed at an EER

[47] EnergyPlus Energy Simulation Software and documentation are available at: *http://apps1.eere.energy.gov/buildings/energyplus/*.

[48] The commercial prototype building models are available on DOE's Web site as Energy Plus input files at: *http://www.energycodes.gov/development/commercial/90.1_models*. Documentation of the initial model development is provided in: Deru, M., *et al., U.S. Department of Energy Commercial Reference Building Models of the National Building Stock*, NREL/TP–5500–46861 (2011).

[49] EnergyConsult Pty Ltd., *Equipment Energy Efficiency Committee Regulatory Impact Statement Consultation Draft: Minimum Energy Performance Standards and Alternative Strategies for Close Control Air Conditioners,* Report No 2008/11 (2008) (Available at: *www.energyrating.gov.au*).

[50] American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), *Energy Standard for Buildings Except Low-Rise Residential Buildings*, ANSI/ASHRAE/IESNA Standard 90.1–2004 (2005).

[51] ASHRAE 90.1–2004 is still one of the prevailing building codes for the design of new commercial buildings. In addition, a large percentage of existing buildings were built in accordance with earlier versions of ASHRAE Standard 90.1.

[52] American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), *Ventilation for Acceptable Indoor Air Quality*, ANSI/ASHRAE/IESNA Standard 62.1–2004 (2004).

[53] An ''outside air economizer'' is a combination of ventilation and exhaust air dampers and controls that increase the amount of outside air brought in to a building when the outside air conditions (*i.e.*, temperature and humidity) are low, such that increasing the amount of ventilation air reduces the equipment cooling loads.

[54] DOE notes that these requirements introduced in ASHRAE Standard 90.1–2010 continued unchanged in ASHRAE Standard 90.1–2013.

of 10.0 and higher for all classes of equipment based on results from the engineering analysis. The supply air blower motors are assumed to run at constant speed and constant power while operating.

DOE used typical meteorological weather data (TMY3) for each location in the simulations.[55] DOE sized equipment for each building simulation using a design day sizing method incorporating the design data found in the EnergyPlus design-day weather data files for each climate.[56] DOE also incorporated an additional cooling sizing factor of 1.1 for the equipment used in the modular office and modular classroom simulations, reflective of the typical sizing adjustment needed to account for discrete available equipment capacities in SPVAC and SPVHP equipment.

EER and heating COP were converted to corresponding simulation inputs for each efficiency level simulated. These inputs, along with the calculated fan power at each efficiency level, were used in the building simulations. Further details of the building model and the simulation inputs for the SPVAC and SPVHP equipment can be found in chapter 7 of the NOPR TSD.

From the annual simulation results for SPVAC equipment, DOE extracted the condenser energy use for cooling, the supply air blower energy use for both heating and cooling hours, the electric resistance heating energy, and the equipment capacity for each building type, climate, and efficiency level. From these, DOE developed corresponding normalized annual cooling energy per cooling ton and annual blower energy per ton for the efficiency levels simulated. DOE also developed the electrical heating energy per ton for the building. These per-ton cooling and blower energy values were added together and then multiplied by the average cooling capacity estimated for the equipment class simulated to arrive at an initial energy consumption estimate for SPVAC. In a deviation from the SPVU NODA analysis, DOE also noted that where fan power was reduced for higher efficiency levels, there was a corresponding increase in the amount of heating required in each climate to make up for the loss of heat energy imparted into the supply air stream through the use of the more efficient supply air blower during the heating season. This impact was climate dependent, with little heating impact in warm climates, and greater heating impact in cold climates where heating energy requirements dominate during the year. DOE calculated this heating ''take back'' effect for higher efficiency levels as a deviation from the baseline heating energy use for each equipment capacity. The final SPVAC energy consumption estimates were then based on the calculated cooling and supply blower energy uses plus this heating take back, which allowed the resulting energy savings estimates to correctly account for the heating energy increase during the year. In addition, it was estimated that 5 percent of the market for the SPVAC less than 65,000 Btu/h class utilize gas furnace heating. The heating take back for these systems was estimated based on the heating load of the systems with electric resistance heat and assuming an average 81-percent furnace annual fuel utilization efficiency (AFUE).

The analytical method for SPVHP was carried out in a similar fashion; however, for heat pumps, DOE included the heating energy (compressor heating and electric resistance backup) directly from the simulation results and, thus, did not separately calculate a heating take back effect. From these data, DOE developed per-ton energy consumption values for cooling, supply blower, and heating electric loads. These per-ton energy figures were summed and multiplied by the nominal capacity for the equipment class simulated to arrive at the annual per-ton energy consumption for SPVHP for each combination of building type, climate, and efficiency level.

For each combination of equipment class, building type, climate, and efficiency level, DOE developed unit energy consumption (UEC) values for each State using weighting factors to establish the contribution of each climate in each State. Once State-level UEC estimates were established, they were provided as input to the life-cycle cost analysis. National average UEC estimates for each equipment class and efficiency level were also established based on population-based weighting across States and shipment weights to the different building types. With regard to the latter, while DOE established shipment weights for SPVAC equipment related to the three building types (educational, office, and telecommunications), DOE determined that SPVHP equipment was not used to a significant extent in telecommunication facilities and, thus, only allocated shipments of SPVHP equipment to two building types, educational and office.

For details of this energy use analysis, see chapter 7 of the NOPR TSD.

Table IV.7 shows the annual UEC estimates for SPVAC and SPVHP corresponding to the efficiency levels analyzed.

[55] Wilcox S. and W. Marion, *User's Manual for TMY3 Data Sets,* National Renewable Energy Laboratory, Report No. NREL/TP–581–43156 (2008).

[56] EnergyPlus TMY3-based weather data files and design day data files available at: *http://apps1.eere.energy.gov/buildings/energyplus/weatherdata_about.cfm.*

TABLE IV.7—NATIONAL UEC ESTIMATES FOR SPVAC AND SPVHP EQUIPMENT

| Efficiency level | Equipment class | | | | |
|---|---|---|---|---|---|
| | SPVAC, <65 kBtu/h | | SPVHP, <65 kBtu/h | SPVAC, ≥65 and <135 kBtu/h | SPVHP, ≥65 and <135 kBtu/h |
| | *kWh/yr* | Gas kBtu/yr * | *kWh/yr* | *kWh/yr* | *kWh/yr* |
| EPCA Baseline | 6,880 | ..... | 20,921 | 13,743 | 41,721 |
| ASHRAE Baseline ** | 6,175 | 54 | 20,383 | 12,251 | 40,589 |
| EL1 | 5,923 | 54 | 19,921 | NA | NA |
| EL2 | 5,694 | 54 | 19,629 | NA | NA |
| EL3 | 5,387 | 54 | 18,775 | NA | NA |
| EL4 ** | 5,185 | 54 | 18,633 | NA | NA |

* Calculated average gas heating "take back" based on 5 percent of market with gas heat.
** ASHRAE Baseline represents max-tech levels established for SPVAC and SPVHP greater than or equal to 65,000 Btu/h, but less than 135,000 Btu/h. EL4 represents max-tech levels established for SPVAC and SPVHP less than 65,000 Btu/h.

*Issue 7:* DOE seeks input on its analysis of UEC for the equipment classes in Table IV.7 and its use in establishing the energy savings potential for higher standards. Of particular interest to DOE is input on shipments of SPVHP equipment to telecommunication shelters and the frequency of use of economizers in equipment serving these shelters.

*Issue 8:* DOE also recognizes that there may be regional differences between the shipments of heat pumps and air conditioners to warmer or cooler climates, and requests stakeholder input on how or if such differences can be taken into account in the energy use characterization.

*F. Life-Cycle Cost and Payback Period Analysis*

DOE conducted the life-cycle cost (LCC) and payback period (PBP) analysis to estimate the economic impacts of potential standards on individual consumers of SPVU equipment. DOE first analyzed these impacts for SPVU equipment by calculating the change in consumers' LCCs likely to result from higher efficiency levels compared with the EPCA and ASHRAE baseline efficiency levels for the SPVU classes discussed in the engineering analysis. The LCC calculation considers total installed cost (equipment cost, sales taxes, distribution chain markups, and installation cost), operating expenses (energy, repair, and maintenance costs), equipment lifetime, and discount rate. DOE calculated the LCC for all customers as if each would purchase an SPVU unit in the year the standard takes effect. DOE presumes that the purchase year for all SPVU equipment for purposes of the LCC calculation is 2015, the compliance date for the energy conservation standard equivalent to the levels in ASHRAE 90.1–2013 (for the EPCA baseline), or 2019, the compliance date for the energy conservation standard more stringent than the corresponding levels in ASHRAE 90.1–2013 (for the ASHRAE baseline). To compute LCCs, DOE discounted future operating costs to the time of purchase and summed them over the lifetime of the equipment.

Next, DOE analyzed the effect of changes in installed costs and operating expenses by calculating the PBP of potential standards relative to baseline efficiency levels. The PBP estimates the amount of time it would take the customer to recover the incremental increase in the purchase price of more-efficient equipment through lower operating costs. In other words, the PBP is the change in purchase price divided by the change in annual operating cost that results from the energy conservation standard. DOE expresses this period in years. Similar to the LCC, the PBP is based on the total installed cost and operating expenses. However, unlike the LCC, DOE only considers the first year's operating expenses in the PBP calculation. Because the PBP does not account for changes in operating expense over time or the time value of money, it is also referred to as a simple PBP.

DOE conducted the LCC and PBP analyses using a commercially-available spreadsheet tool and a purpose-built spreadsheet model, available on DOE's Web site.[57] This spreadsheet model developed by DOE accounts for variability in energy use and prices, installation costs, repair and maintenance costs, and energy costs. It uses weighting factors to account for distributions of shipments to different building types and states to generate national LCC savings by efficiency level. The results of DOE's LCC and PBP analysis are summarized in section V.B and described in detail in chapter 8 of the NOPR TSD.

1. Approach

Recognizing that each business that uses SPVU equipment is unique, DOE analyzed variability and uncertainty by performing the LCC and PBP calculations assuming a correspondence between five types of businesses (education, telecommunications, construction and mining firms occupying temporary offices, a variety of service and retail firms occupying conventional office space, and health care firms) for customers located in three types of commercial buildings (telecommunications, education, and office). DOE developed financial data appropriate for the customers in each business and building type. Each type of building has typical customers who have different costs of financing because of the nature of the business. DOE derived the financing costs based on data from the Damodaran Online Web site.[58]

The LCC analysis used the estimated annual energy use for each SPVU equipment unit described in section IV.E. Because energy use of SPVU equipment is sensitive to climate, energy use varies by State. Aside from energy use, other important factors influencing the LCC and PBP analyses are energy prices, installation costs, equipment distribution markups, and sales tax. All of these factors are assumed to vary by State. At the national level, the LCC spreadsheets explicitly model both the uncertainty and the variability in the model's inputs, using probability distributions based on the shipments of SPVU equipment to different States.

[57] See *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/35.*

[58] Damodaran Online (Last accessed Feb. 14, 2014) (Available at: *http://pages.stern.nyu.edu/~adamodar/New_Home_Page/home.htm*).

As mentioned earlier, DOE generated LCC and PBP results by business type within building type and State and developed weighting factors to generate national average LCC savings and PBPs for each efficiency level. As there is a unique LCC and PBP for each calculated value at the building type and State level, the outcomes of the analysis can also be expressed as probability distributions with a range of LCC and PBP results. A distinct advantage of this type of approach is that DOE can identify the percentage of customers achieving LCC savings or attaining certain PBP values due to an increased efficiency level, in addition to the average LCC savings or average PBP for that efficiency level.

2. Life-Cycle Cost Inputs

For each efficiency level DOE analyzed, the LCC analysis required input data for the total installed cost of the equipment, its operating cost, and the discount rate. Table IV.8 summarizes the inputs and key assumptions DOE used to calculate the consumer economic impacts of all energy efficiency levels analyzed in this rulemaking. A more detailed discussion of the inputs follows.

TABLE IV.8—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES

| Inputs | Description |
|---|---|
| **Affecting Installed Costs** | |
| Equipment Price | Equipment price was derived by multiplying manufacturer sales price or MSP (calculated in the engineering analysis) by distribution channel markups, as needed, plus sales tax from the markups analysis. |
| Installation Cost | Installation cost includes installation labor, installer overhead, and any miscellaneous materials and parts, derived from *RS Means CostWorks 2014*[59] and converted to 2013$. |
| **Affecting Operating Costs** | |
| Annual Energy Use | Annual unit energy consumption for each class of equipment at each efficiency level estimated by state and building type using simulation models and a population-based mapping of climate locations to states. |
| Electricity Prices, Natural Gas Prices. | DOE developed average electricity prices based on Energy Information Administration (EIA) Form 826 data for 2013.[60] Future electricity prices are projected based on Annual Energy Outlook 2013 (AEO 2013).[61] DOE developed natural gas prices based on EIA state-level commercial prices in EIA data navigator.[62] Future natural gas prices are projected based on AEO 2013. |
| Maintenance Cost | DOE estimated annual maintenance costs based on RS Means CostWorks 2014 for small, single-zone rooftop commercial air conditioning equipment. Annual maintenance cost did not vary as a function of efficiency. |
| Repair Cost | DOE estimated the annualized repair cost for baseline-efficiency SPVU equipment based on cost data from RS Means CostWorks 2014 for small, single-zone rooftop commercial air conditioning equipment. DOE assumed that the materials and components portion of the repair costs would vary in direct proportion with the MSP at higher efficiency levels because it generally costs more to replace components that are more efficient. |
| **Affecting Present Value of Annual Operating Cost Savings** | |
| Equipment Lifetime | DOE estimated that SPVU equipment lifetimes range between 10 and 25 years, with an average lifespan of 15 years, based on estimates cited in available packaged air conditioner literature.[63] [64] [65] |
| Discount Rate | Mean real discount rates for all buildings range from 2.4 percent for education buildings to almost 11.5 percent for some office building owners. |
| Analysis Start Year | Start year for LCC is 2019, which is the earliest compliance date that DOE can set for new standards if it adopts any efficiency level for energy conservation standards higher than that shown in ASHRAE Standard 90.1–2013. |
| **Analyzed Efficiency Levels** | |
| Analyzed Efficiency Levels | DOE analyzed the ASHRAE baseline efficiency levels and up to four higher efficiency levels for SPVUs <65,000 Btu/h and only the ASHRAE baseline for SPVUs >65,000 Btu/h. See the engineering analysis for additional details on selections of efficiency levels and cost. |

DOE analyzed the EPCA and ASHRAE baseline efficiency levels (reflecting the efficiency levels in ASHRAE Standard 90.1–2013) and up to four higher efficiency levels for SPVUs <65,000 Btu/h. Chapter 5 of the NOPR TSD provides additional details on selections of efficiency levels and cost.

[59] RS Means CostWorks 2014, R.S. Means Company, Inc. (2013) (Last accessed on February 27, 2014).

[60] U.S. Energy Information Administration. Electric Sales, Revenue, and Average Price 2013, Select table Sales and Revenue Data by State, Monthly Back to 1990 (Form EIA–826), (Last accessed on February 19, 2014) (Available at: *http://www.eia.gov/cneaf/electricity/page/sales_revenue.xls*).

[61] U.S. Energy Information Administration. *Annual Energy Outlook 2013* (2013) DOE/EIA–0383(2013). (Last Accessed March 12, 2014) (Available at: *http://www.eia.gov/forecasts/archive/aeo13/).*

[62] U.S. Energy Information Administration. Average Price of Natural Gas Sold to Commercial Consumers—by State. (Last accessed on February 17, 2014) (Available at: *http://www.eia.gov/dnav/ng/ng_pri_sum_a_EPG0_PCS_DMcf_a.htm*).

[63] American Society of Heating, Refrigerating, and Air-Conditioning Engineers, ASHRAE Handbook: 2011 Heating, Ventilating, and Air-Conditioning Applications (2011).

[64] Abramson, Interactive Web-based Owning and Operating Cost Database, Final Report ASHRAE Research Project RP–1237 (2005).

[65] Energy Efficient Strategies Pty Ltd., Equipment Energy Efficiency Committee Regulatory Impact Statement Consultation Draft. Revision to the Energy Labelling Algorithms and Revised MEPS levels and Other Requirements for Air Conditioners, Report No 2008/09 (September 2008) (Last accessed March 22, 2012) (Available at: *http://www.energyrating.gov.au/wp-content/uploads/Energy_Rating_Documents/Library/Cooling/Air_Conditioners/200809-ris-ac.pdf*).

a. Equipment Prices

The price of SPVU equipment reflects the application of distribution channel markups (mechanical contractor markups) and sales tax to the manufacturer sales price (MSP), which is the cost established in the engineering analysis. As described in section IV.D, DOE determined distribution channel costs and markups for air-conditioning equipment. For each equipment class, the engineering analysis provided contractor costs for the ASHRAE baseline equipment and up to four higher equipment efficiencies.

The markup is the percentage increase in price as the SPVU equipment passes through distribution channels. As explained in section IV.D, SPVU equipment is assumed to be delivered by the manufacturer through a variety of distribution channels. If the SPVU equipment is for a new installation, it is assumed to be sold as a component of a new modular building. There are several distribution pathways that involve different combinations of the costs and markups of air-conditioning equipment wholesaler/distributors, manufacturers of modular buildings, and wholesalers/distributors of modular buildings. In some cases, a general contractor is also involved for site preparation and management. Some replacement equipment is assumed to be sold directly to mechanical contractors and to wholesalers/distributors of modular buildings, but some is sold through air-conditioning equipment wholesalers/distributors to these same entities. The overall markups used in LCC analyses are weighted averages of all of the relevant distribution channel markups.

To project an MSP price trend for the NOPR, DOE derived an inflation-adjusted index of the PPI for miscellaneous refrigeration and air-conditioning equipment over the period 1990–2010. These data show a general price index decline from 1990 to 2004, followed by a sharp increase, primarily due to rising prices of copper and steel components that go into this equipment, in turn driven by rapidly rising global demand. Since 2009, there has been no clear trend in the price index. Given the continued slow global economic activity in 2009 through 2013, DOE believes that the extent to which the future trend can be predicted based on the last two decades is very uncertain and that the observed data do not provide a firm basis for projecting future costs trends for SPVU equipment. Therefore, DOE used a constant price assumption as the default price factor index to project future SPVU prices in 2019. Thus, prices projected for the LCC and PBP analysis are equal to the 2013 values for each efficiency level in each equipment class. Appendix 8–D of the NOPR TSD describes the historical data and the derivation of the price projection.

*Issue 9:* DOE requests comments on the most appropriate trend to use for real (inflation-adjusted) SPVU prices.

b. Installation Costs

DOE derived national average installation costs for SPVU equipment from data provided in RS Means CostWorks 2014 (hereafter referred to as RS Means) specifically for packaged air-conditioning equipment. RS Means provides estimates for installation costs for SPVU units by equipment capacity, as well as cost indices that reflect the variation in installation costs for 295 cities in the United States. The RS Means data identify several cities in all 50 States and the District of Columbia. DOE incorporated location-based cost indices into the analysis to capture variation in installation costs, depending on the location of the consumer.

For more-stringent efficiency levels, DOE recognized that installation costs potentially could be higher with larger units and higher-efficiency SPVU equipment, mainly due to increased size. DOE utilized RS Means installation cost data from RS Means to derive installation cost curves by size of unit for base-efficiency models. DOE did not have data to calibrate the extent to which installation costs might change as efficiency increased. For the NOPR LCC analysis, DOE assumed that installation cost would not increase as a function of increased efficiency.

*Issue 10:* DOE seeks comments on its assumption that installation costs would not increase for higher-efficiency SPVUs.

c. Annual Energy Use

DOE estimated the annual electricity and natural gas consumed by each class of SPVU equipment, by efficiency level, based on the energy use analysis described in section IV.E and in chapter 7 of the NOPR TSD.

d. Electricity and Natural Gas Prices

Electricity prices and natural gas prices are used to convert changes in the electric and natural gas consumption from higher-efficiency equipment into energy cost savings. Because of the variation in annual electricity and natural gas consumption savings and equipment costs across the country, it is important to consider regional differences in electricity and natural gas prices. DOE used average effective commercial electricity prices [66] and commercial natural gas prices [67] at the State level from Energy Information Administration (EIA) data for 2013. This approach captured a wide range of commercial electricity and natural gas prices across the United States. Furthermore, different kinds of businesses typically use electricity in different amounts at different times of the day, week, and year, and therefore, face different effective prices. To make this adjustment, DOE used EIA's 2003 CBECS data set [68] to identify the average prices that the five business types paid for electricity and natural gas and compared them separately with the corresponding average prices that all commercial customers paid. DOE used the ratios of prices paid by the five types of businesses to the national average commercial prices seen in the 2003 CBECS as multipliers to adjust the average commercial 2013 State price data.

DOE weighted the electricity and natural gas consumption and prices each business type paid in each State by the estimated percentages of SPVU equipment in each business type and by the population in each State to obtain weighted-average national electricity and natural gas costs for 2013. The State/building-type weights reflect the probabilities that a given unit of SPVU equipment shipped will operate with a given fuel price. The original State-by-State average commercial prices range from approximately $0.074 per kWh to approximately $0.341 per kWh for electricity and from approximately $6.81 per MBtu to $43.36 per MBtu for natural gas. See chapter 8 of the NOPR TSD for further details.

The electricity and natural gas price trends provide the relative change in electricity and natural gas costs for future years. DOE used the AEO 2013 reference case to provide the default electricity and natural gas price scenarios. DOE extrapolated the trend in values at the Census Division level from 2025 to 2040 of the projection for all five building types to establish prices

[66] Energy Information Administration, Form EIA–826 Database Monthly Electric Utility Sales and Revenue Data (EIA–826 Sales and Revenue Spreadsheets) (Available at: *http://www.eia.gov/electricity/data/eia826/*> On the right side of the screen under Aggregated, select 1990-current. (Last accessed March 26, 2014).

[67] Energy Information Administration, Natural Gas Prices (Available at: *http://www.eia.gov/dnav/ng/ng_pri_sum_a_EPG0_PCS_DMcf_a.htm*) (Last accessed February 13, 2014).

[68] Energy Information Administration, Commercial Building Energy Consumption Survey 2003, CBECS Public Use Microdata Files (Available at: <*http://www.eia.gov/consumption/commercial/data/2003/index.cfm?view=microdata*>) (Last accessed February 12, 2014).

beyond 2040 (see section IV.F.2.g). DOE provides a sensitivity analysis of the LCC savings and PBP results to different fuel price scenarios using both the *AEO 2013* high-price and low-price projections in appendix 8–C of the NOPR TSD.

e. Maintenance Costs

Maintenance costs are the costs to the consumer of ensuring continued equipment operation. Maintenance costs include services such as cleaning heat-exchanger coils and changing air filters. DOE estimated annual routine maintenance costs for SPVU air conditioners as $311 per year (2013$) for capacities up to 135,000 Btu/h. For heat pumps less than 65,000 Btu/h capacity, maintenance costs reported in the RS Means CostWorks 2013 database were $345 per year; costs were $414 per year for larger capacities. Because data were not available to indicate how maintenance costs vary with equipment efficiency, DOE used preventive maintenance costs that remain constant as equipment efficiency increases.

f. Repair Costs

The repair cost is the cost to the customer of replacing or repairing components that have failed in the SPVU equipment. DOE estimated the one-time repair cost in RS Means as equivalent to those for small packaged rooftop units: $2,594 (2013$) for both air conditioners and heat pumps less than 65,000 Btu/h capacity, and $3,245 for larger units. Based on frequency and type of major repairs in the RS Means database, DOE assumed that the repair would be a one-time event at about year 10 of the equipment life that involved replacing the supply fan motor, compressor, some bearings, and refrigerant. DOE then annualized the present value of the cost over the average equipment life of 15 years to obtain an annualized equivalent repair cost. DOE determined that the materials portion of annualized repair costs would increase in direct proportion with increases in equipment prices, because the replacement parts would be similar to the more expensive original equipment that they replaced. Because the price of SPVU equipment increases with efficiency, the cost for component repair is also expected to increase as the efficiency of equipment increases. See chapter 8 of the NOPR TSD for details on the development of repair cost estimates.

g. Equipment Lifetime

DOE defines ''equipment lifetime'' as the age when a unit of SPVU equipment is retired from service. DOE reviewed available literature to establish typical equipment lifetimes, which showed a wide range of lifetimes from 10 to 25 years. The data did not distinguish between classes of SPVU equipment. Consequently, DOE used a distribution of lifetimes between 10 and 25 years, with an average of 15 years based on a review of a range of packaged cooling equipment lifetime estimates found in published studies and online documents. DOE applied this distribution to all classes of SPVU equipment analyzed. Chapter 8 of the NOPR TSD contains a detailed discussion of equipment lifetimes.

h. Discount Rate

The discount rate is the rate at which future expenditures are discounted to establish their present value. DOE determined the discount rate by estimating the cost of capital for purchasers of SPVU equipment. Most purchasers use both debt and equity capital to fund investments. Therefore, for most purchasers, the discount rate is the weighted-average cost of debt and equity financing, or the weighted-average cost of capital (WACC), less the expected inflation.

To estimate the WACC of SPVU equipment purchasers, DOE used a sample of more than 340 companies grouped to be representative of operators of each of five commercial business types (health care, education, telecommunications, temporary office, and general office,) drawn from a database of 7,766 U.S. companies presented on the Damodaran Online Web site.[69] This database includes most of the publicly-traded companies in the United States. The WACC approach for determining discount rates accounts for the current tax status of individual firms on an overall corporate basis. DOE did not evaluate the marginal effects of increased costs, and, thus, depreciation due to more expensive equipment, on the overall tax status.

DOE used the final sample of companies to represent purchasers of SPVU equipment. For each company in the sample, DOE derived the cost of debt, percentage of debt financing, and systematic company risk from information on the Damodaran Online Web site. Damodaran estimated the cost of debt financing from the nominal long-term Federal government bond rate and the standard deviation of the stock price. DOE then determined the weighted average values for the cost of debt, range of values, and standard deviation of WACC for each category of the sample companies. Deducting expected inflation from the cost of capital provided estimates of the real discount rate by ownership category.

For most educational buildings and a portion of the office buildings occupied by public schools, universities, and State and local government agencies, DOE estimated the cost of capital based on a 40-year geometric mean of an index of long-term tax-exempt municipal bonds (>20 years).[70] Federal office space was assumed to use the Federal bond rate, derived as the 40-year geometric average of long-term (>10 years) U.S. government securities.[71]

Based on this database, DOE calculated the weighted-average, after-tax discount rate for SPVU equipment purchases, adjusted for inflation, in each of the five business types, which were allocated to the three building types used in the analysis based on estimated market shares of modular buildings used by each business type. The allocation percentages came from a combination of manufacturer interviews and industry data published by the Modular Buildings Institute.[72] [73] [74] [75]

Chapter 8 of the NOPR TSD contains the detailed calculations related to discount rates.

3. Payback Period

DOE also determined the economic impact of potential amended energy conservation standards on consumers by calculating the PBP of more-stringent efficiency levels relative to the base-case efficiency levels. The PBP measures the amount of time it takes the commercial customer to recover the assumed higher purchase expense of more-efficient equipment through lower operating costs. Similar to the LCC, the PBP is

[69] Damodaran financial data used for determining cost of capital is available at: *http://pages.stern.nyu.edu/~adamodar/* for commercial businesses (Last accessed February 12, 2014).

[70] Federal Reserve Bank of St. Louis, *State and Local Bonds—Bond Buyer Go 20-Bond Municipal Bond Index* (Last accessed February 12, 2014 (Available at: *http://research.stlouisfed.org/fred2/series/MSLB20/downloaddata?cid=32995*).

[71] Rate calculated with 1973–2013 data. Data source: U.S. Federal Reserve (Last accessed February 12, 2014) (Available at: *http://www.federalreserve.gov/releases/h15/data.htm*).

[72] Modular Building Institute, State of the Industry 2006 (Available at: *http://www.modular.org/HtmlPage.aspx?name=analysis*) (March 6, 2014).

[73] Modular Building Institute, Commercial Modular Construction Report 2008 (Available at: *http://www.modular.org/HtmlPage.aspx?name=analysis*) (March 6, 2014).

[74] Modular Building Institute, Commercial Modular Construction Report 2009 (Available at: *http://www.modular.org/HtmlPage.aspx?name=analysis*) (March 6, 2014).

[75] Modular Building Institute, Relocatable Buildings 2011 Annual Report (Available at: *http://www.modular.org/HtmlPage.aspx?name=analysis*) (March 6, 2014).

based on the total installed cost and the operating expenses for each building type and State, weighted on the probability of shipment to each market. Because the simple PBP does not take into account changes in operating expense over time or the time value of money, DOE considered only the first year's operating expenses to calculate the PBP, unlike the LCC, which is calculated over the lifetime of the equipment. Chapter 8 of the NOPR TSD provides additional details about the PBP.

*G. National Impact Analysis*

The national impact analysis (NIA) evaluates the effects of a considered energy conservation standard from a national perspective rather than from the customer perspective represented by the LCC. This analysis assesses the net present value (NPV) (future amounts discounted to the present) and the national energy savings (NES) of total commercial consumer costs and savings that are expected to result from amended standards at specific efficiency levels.

The NES refers to cumulative energy savings for the lifetime of units shipped from 2019 through 2048. DOE calculated energy savings in each year relative to a base case, defined as DOE adoption of the efficiency levels specified by ASHRAE Standard 90.1–2013. DOE also calculated energy savings from adopting efficiency levels specified by ASHRAE Standard 90.1–2013 compared to the EPCA base case (*i.e.,* the current Federal standards) for units shipped from 2015 through 2044. The NPV refers to cumulative monetary savings. DOE calculated net monetary savings in each year relative to the base case (ASHRAE Standard 90.1–2013) as the difference between total operating cost savings and increases in total installed cost. DOE accounted for operating cost savings until 2068, when the equipment installed in the 30th year after the compliance date of the amended standards should be retired. Cumulative savings are the sum of the annual NPV over the specified period.

1. Approach

The NES and NPV are a function of the total number of units in use and their efficiencies. Both the NES and NPV depend on annual shipments and equipment lifetime. Both calculations start by using the shipments estimate and the quantity of units in service derived from the shipments model.

To make the analysis more transparent to all interested parties, DOE used a spreadsheet tool, available on DOE's Web site,[76] to calculate the energy savings and the national economic costs and savings from potential amended standards. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet.

Unlike the LCC analysis, the NES spreadsheet does not use distributions for inputs or outputs, but relies on national average equipment costs and energy costs developed from the LCC spreadsheet. DOE used the NES spreadsheet to perform calculations of energy savings and NPV using the annual energy consumption and total installed cost data from the LCC analysis. For efficiency levels higher than ASHRAE, DOE projected the energy savings, energy cost savings, equipment costs, and NPV of benefits for equipment sold in each SPVU class from 2019 through 2048. For the ASHRAE level, DOE project energy savings for equipment sold from 2015 through 2044. DOE does not calculate economic benefits for the ASHRAE level because it is statutorily required to use the ASHRAE level as the baseline. The projection provided annual and cumulative values for all four output parameters described above.

a. National Energy Savings

DOE calculated the NES associated with the difference between the per-unit energy use under a standards-case scenario and the per-unit energy use in the base case. The average energy per unit used by the SPVUs in service gradually decreases in the standards case relative to the base case because more-efficient SPVUs are expected to gradually replace less-efficient ones.

Unit energy consumption values for each equipment class are taken from the LCC spreadsheet for each efficiency level and weighted based on market efficiency distributions. To estimate the total energy savings for each efficiency level, DOE first calculated the delta unit energy consumption (*i.e.,* the difference between the energy directly consumed by a unit of equipment in operation in the base case and the standards case) for each class of SPVUs for each year of the analysis period. The analysis period begins with the earliest expected compliance date of amended energy conservation standards (*i.e.,* 2015), assuming DOE adoption of the baseline ASHRAE Standard 90.1–2013 efficiency levels. For the analysis of DOE's potential adoption of more-stringent efficiency levels, the analysis period does not begin until the compliance date of 2019, four years after DOE would likely issue a final rule requiring such standards. Second, DOE determined the annual site energy savings by multiplying the stock of each equipment class by vintage (*i.e.,* year of shipment) by the delta unit energy consumption for each vintage (from step one). As mentioned in section IV.E, this includes an increase in gas usage for some SPVAC units sold with gas furnaces (where fan power was reduced to achieve higher efficiency levels). Third, DOE converted the annual site electricity savings into the annual amount of energy saved at the source of electricity generation (the source or primary energy), using a time series of conversion factors derived from the latest version of EIA's National Energy Modeling System (NEMS). Finally, DOE summed the annual primary energy savings for the lifetime of units shipped over a 30-year period to calculate the total NES. DOE performed these calculations for each efficiency level considered for SPVUs in this rulemaking.

DOE has historically presented NES in terms of primary energy savings. In response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Science, DOE announced its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). While DOE stated in that notice that it intended to use the Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation (GREET) model to conduct the analysis, it also said it would review alternative methods, including the use of NEMS. After evaluating both models and the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in the **Federal Register** in which DOE explained its determination that NEMS is a more appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). DOE received one comment, which was supportive of the use of NEMS for DOE's FFC analysis.[77]

The approach used for the NOPR, and the FFC multipliers that were applied, are described in appendix 10A of the NOPR TSD. NES results are presented in

[76] DOE's Web page on SPVUs can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/35.*

[77] Docket ID: EERE–2010–BT–NOA–0028, comment by Kirk Lundblade.

both primary and FFC savings in section V.B.3.a.

DOE considered whether a rebound effect is applicable in its NES analysis for SPVUs. A rebound effect occurs when an increase in equipment efficiency leads to increased demand for its service. For example, when a consumer realizes that a more-efficient air conditioner will lower the electricity bill, that person may opt for increased comfort in the home by lowering the temperature, thereby returning a portion of the energy cost savings. The NEMS model assumes an efficiency rebound to account for an increased demand for service due to the increase in cooling (or heating) efficiency.[78] For the SPVU market, there are two ways that a rebound effect could occur: (1) Increased use of the air-conditioning equipment within the commercial buildings in which such units are installed; and (2) additional instances of air-conditioning of spaces that were not being cooled before. Because SPVUs are a commercial appliance, the person owning the equipment (*i.e.,* the building owner) is usually not the person operating the equipment (*i.e.,* the renter). Because the operator usually does not own the equipment, that person will not have the operating cost information necessary to influence their operation of the equipment. Therefore, DOE believes that the first instance is unlikely to occur. Similarly, the second instance is unlikely because a small change in efficiency is insignificant among the factors that determine how much floor space will be air-conditioned.

*Issue 11:* DOE seeks comment on whether a rebound effect should be included in the determination of annual energy savings. If a rebound effect should be included, DOE seeks data to assist in calculation of the rebound effect.

b. Net Present Value

To estimate the NPV, DOE calculated the net impact as the difference between total operating cost savings and increases in total installed costs. DOE calculated the NPV of each considered standard level over the life of the equipment using the following three steps.

First, DOE determined the difference between the equipment costs under the standard-level case and the base case in order to obtain the net equipment cost increase resulting from the higher standard level. As noted in section IV.F.2.a, DOE used a constant price assumption as the default price forecast; the cost to manufacture a given unit of higher efficiency neither increases nor decreases over time. In addition, DOE considered two alternative price trends in order to investigate the sensitivity of the results to different assumptions regarding equipment price trends. One of these used an exponential fit on the deflated Producer Price Index (PPI) for all other miscellaneous refrigeration and air-conditioning equipment, and the other is based on the ''deflator—other durables excluding medical'' that was forecasted for *AEO 2013.* The derivation of these price trends is described in appendix 10B of the NOPR TSD.

Second, DOE determined the difference between the base-case operating costs and the standard-level operating costs in order to obtain the net operating cost savings from each higher efficiency level. Third, DOE determined the difference between the net operating cost savings and the net equipment cost increase in order to obtain the net savings (or expense) for each year. DOE then discounted the annual net savings (or expenses) to 2014 for SPVUs bought on or after 2019 and summed the discounted values to provide the NPV for an efficiency level.

In accordance with the OMB's guidelines on regulatory analysis,[79] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return on private capital in the U.S. economy. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, because recent OMB analysis has found the average rate of return on capital to be near this rate. DOE used the 3-percent rate to capture the potential effects of standards on private consumption (*e.g.,* through higher prices for products and reduced purchases of energy). This rate represents the rate at which society discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term government debt (*i.e.,* yield on United States Treasury notes minus annual rate of change in the Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the past 30 years.

2. Shipments Analysis

In its shipments analysis, DOE developed shipment projections for SPVUs and, in turn, calculated equipment stock over the course of the analysis period. DOE used the shipments projection and the equipment stock to determine the NES. In order to account for the analysis periods of both the ASHRAE level and higher efficiency levels, the shipments portion of the spreadsheet model projects SPVU shipments from 2015 through 2048.

To develop the shipments model, DOE started with 2005 shipment estimates from the Air-Conditioning and Refrigeration Institute (ARI, now AHRI) for units less than 65,000 Btu/h as published in a previous rulemaking,[80] as more recent data are not available. DOE added additional shipments for SPVACs greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h, which make up 3 percent of the market, based on manufacturer interviews. As there are no models on the market for SPVHP greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h, or for any SPVUs greater than or equal to 135,000 Btu/h, DOE did not develop shipment estimates (or generate NES and NPV) for these equipment classes. See chapter 9 of the NOPR TSD for more details on the initial shipment estimates by equipment class that were used as the basis for the shipments projections discussed below.

To project shipments of SPVUs for new construction (starting in 2006), DOE relied primarily on sector-based estimates of saturation and projections of floor space. Based on manufacturer interview information, DOE allocated 35 percent of shipments to the education sector, 35 percent to telecom, and 30 percent to offices. DOE used the 2005 new construction shipments and 2005 new construction floor space for education (from *AEO 2013*) to estimate a saturation rate.[81] DOE applied this

[78] An overview of the NEMS model and documentation is found at: *www.eia.doe.gov/oiaf/aeo/overview/index.html.*

[79] OMB Circular A–4, section E (Sept. 17, 2003) (Available at: *www.whitehouse.gov/omb/circulars_a004_a-4.*)

[80] U.S. Department of Energy—Office of Energy Efficiency and Renewable Energy, Technical Support Document: Energy Efficiency Program for Commercial and Industrial Equipment: Efficiency Standards for Commercial Heating, Air-Conditioning, and Water Heating Equipment Including Packaged Terminal Air-Conditioners and Packaged Terminal Heat Pumps, Small Commercial Packaged Boiler, Three-Phase Air-Conditioners and Heat Pumps <65,000 Btu/h, and Single-Package Vertical Air Conditioners and Single-Package Vertical Heat Pumps <65,000 Btu/h (March 2006) (Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/pdfs/ashrae_products/ashrae_products_draft_tsd_030206.pdf*). This TSD was prepared for the rulemaking that resulted in the Final Rule: Energy Efficiency Program for Certain Commercial and Industrial Equipment: Efficiency Standards for Commercial Heating, Air-Conditioning, and Water-Heating Equipment. 72 FR 10038 (March 7, 2007).

[81] Manufacturers reported that in 2012, 50 percent of shipments were for new construction. DOE originally adjusted that split for 2005 until the result from the shipments model was 50/50 in 2012. This resulting 2005 split was 84 percent new construction and 16 percent replacement. However,

saturation rate to *AEO 2013* projections of new construction floor space to project shipments to new construction in the education sector through 2048. In this projection, shipments to education decline through 2026 before rising to levels still lower than those in 2005. DOE originally used this methodology for offices also, as published in the April 2014 NODA. However, in response to the April 2014 NODA, AHRI and Lennox International suggested that the SPVU projected shipment trend was ''optimistic'' and did not reflect the economic downturn. (AHRI, No. 24 at p. 6; Lennox International Inc., No. 15 at p. 7) After reviewing modular building industry literature,[82] DOE agrees with AHRI and Lennox, but for the small office sector only; DOE has determined that the increasing trend in the *AEO* for small offices does not adequately represent the modular building industry. As a result, DOE has tentatively decided to hold SPVU shipments to new office construction constant at 2005 levels. (For more details, see chapter 9 of the NOPR TSD.) For shipments to telecom, DOE developed an index based on County Business Pattern data for establishments[83] and projected this trend forward. This projection increases significantly over the analysis period, which may have led in part to AHRI and Lennox's suggestion that the overall shipment projection was optimistic. However, in response to the April 2014 NODA, the CA IOUs pointed out that the rapid expansion of wireless communications resulted in expanded use of SPVUs. (CA IOUs, No. 19 at p. 5) DOE agrees with the CA IOUs' assessment for telecom and has chosen to maintain the increasing projection for that sector.

To allocate the total projected shipments for office, education, and telecom into the equipment classes applicable to each sector, DOE used the fraction of shipments from 2005 for each equipment class in each sector. This fractions within each sector remained constant over time. The complete discussion of shipment allocation and projected shipments for the different equipment classes can be found in chapter 9 of the NOPR TSD.

In order to model shipments for replacement SPVUs, DOE developed historical shipments for SPVUs back to 1981 based on an index of square footage production data from the Modular Buildings Institute.[84] Shipments prior to 1994 were extrapolated based on a trend from 1994 to 2005. In the stock model, the lifetime of SPVUs follows the distribution discussed in section IV.F.2.g, with a minimum of 10 years and a maximum of 25 years. All retired units are assumed to be replaced with new shipments. The complete discussion of the method for extrapolating historical shipments can be found in chapter 9 of the NOPR TSD.

As equipment purchase price and repair costs increase with efficiency, higher first costs and repair costs can result in a drop in shipments. In manufacturer interviews, manufacturers expressed concern that an increase in first cost could lead customers to switch to split-system or rooftop units. However, manufacturers did not provide any information on the price point at which this switch might occur, and DOE had insufficient data for estimating the elasticity of shipments for SPVUs as a function of first costs, repair costs, or operating costs. In addition, DOE notes that SPVUs serve a specific niche market and that a switch from SPVUs to another type of equipment would require significant changes in the market, such as installation on site rather than at the modular building manufacturer, the use of a mechanical contractor (including their markups), and potential changes to needed ductwork and other infrastructure. Therefore, DOE assumed that the shipments projection would not change under the considered standard levels.

*Issue 12:* DOE seeks comment on whether amended standards would be likely to affect shipments.

3. Base-Case and Standards-Case Forecasted Distribution of Efficiencies

DOE uses a base-case distribution of efficiency levels to project what the SPVU market would look like in the absence of amended standards. DOE developed a base-case distribution of efficiency levels for SPVU equipment using manufacturer-provided estimates. DOE applied the percentages of models within each efficiency range to the total unit shipments for a given equipment class to estimate the distribution of shipments for the base case. Then, from those market shares and projections of shipments by equipment class, DOE extrapolated future equipment efficiency trends both for a base-case scenario and for standards-case scenarios.

To estimate a base-case efficiency trend, DOE used the trend from 2012 to 2035 found in the Commercial Unitary Air Conditioner Advance Notice of Proposed Rulemaking (ANOPR), which estimated an increase of approximately 1 EER every 35 years.[85] DOE used this same trend in the standards-case scenarios, when seeking to ascertain the impact of amended standards.

For each efficiency level analyzed, DOE used a ''roll-up'' scenario to establish the market shares by efficiency level for the year that compliance would be required with amended standards (*i.e.,* 2015 if DOE adopts the efficiency levels in ASHRAE Standard 90.1–2013, or 2019 if DOE adopts more-stringent efficiency levels than those in ASHRAE Standard 90.1–2013). DOE collected information suggesting that, as the name implies, the efficiencies of equipment in the base case that did not meet the standard level under consideration would roll up to meet the amended standard level. This information also suggests that equipment efficiencies in the base case that were above the standard level under consideration would not be affected. The base-case efficiency distributions for each equipment class are presented in chapter 10 of the NOPR TSD.

*H. Consumer Subgroup Analysis*

In analyzing the potential impact of new or amended standards on commercial consumers, DOE evaluates the impact on identifiable groups (*i.e.,* subgroups) of consumers, such as different types of businesses that may be disproportionately affected by a national standard level. For this rulemaking, DOE identified mining and construction companies occupying temporary office space as a disproportionately affected subgroup. Because it has generally higher costs of capital and, therefore, higher discount rates than other firms using SPVUs, this consumer subgroup is less likely than average to value the benefits of increased energy savings.

this led to a steep shipments increase in the model from 2005 to 2006. Instead, DOE used the 50/50 split directly in 2005, which resulted in a much steadier shipments trend. Therefore, 2005 new construction shipments are derived using 50 percent of the total 2005 historical shipments.

[82] Modular Building Institute, Relocatable Buildings 2012 Annual Report; Relocatable Buildings 2011 Annual Report (Available at: *http://www.modular.org/documents/2012-RB-Annual-Report.pdf* and *http://www.triumphmodular.com/resources/documents/2011relocatable.pdf*).

[83] U.S. Census Bureau, County Business Patterns for NAICS 237130 Power and Communication Line and Related Structures Construction (Available at: *http://www.census.gov/econ/cbp/index.html*) (Last accessed April 15, 2014).

[84] Available at: *http://www.modular.org/HtmlPage.aspx?name=analysis* (Last accessed May 18, 2012).

[85] *See* DOE's technical support document underlying DOE's July 29, 2004 ANOPR. 69 FR 45460 (Available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2006-STD-0103-0078*). SPVUs have only had EER standards since 2002, which was not long enough to establish an efficiency trend.

However, this group also faces relatively high electricity prices compared with some other consumer subgroups. These two conditions tend to offset each other, so a quantitative analysis was required to determine whether this subgroup would experience higher or lower than average LCC savings. Another type of consumer that might be disproportionately affected is public education facilities. Because of their tax-exempt status, public education agencies generally have lower capital costs than other SPVU users and, thus, might disproportionately benefit from increased SPVU energy efficiency; however, they also typically face lower electricity costs than other commercial customers, so a quantitative analysis was required to determine whether they would have lower or higher than average LCC savings.

For the NOPR, DOE also analyzed the potential effects of amended SPVU standards on businesses with high capital costs, which are generally (but not always) small businesses. DOE analyzed the potential impacts of amended standards by conducting the analysis with different discount rates, because small businesses do not have the same access to capital as larger businesses, but they may pay similar prices for electricity. DOE obtained size premium data from Ibbotson Associates' *Stocks, Bonds, Bills, and Inflation 2013 Yearbook.*[86] For the period of 1926–2012, the geometric mean of annual returns for the smallest companies in all industries (13 percent) was 103.1 percent of the average for the total value-weighted index of companies listed on the New York Stock Exchange (NYSE), American Stock Exchange (AMEX), and National Association of Security Dealers Stock Exchange (NASDAQ) (9.6 percent), implying that on average, historical performance of small companies has been (113.0/109.6)=1.031 or 3.1 percent points higher than the market average, in effect a ''small company size premium'', an extra cost premium that they have to pay to do business. DOE assumed that for businesses purchasing SPVUs and purchasing or renting modular buildings containing SPVUs, the average discount rate for small companies is 3.1 percent higher than the industry average.

DOE determined the impact of consumer subgroup costs and savings using the LCC spreadsheet model. DOE conducted the LCC and PBP analyses separately for consumers represented by the mining and construction firms using temporary office buildings and for public education agencies using portable classrooms, and then compared the results with those for average commercial customers. DOE also conducted an analysis in which only firms with a discount rate 3.1 percent higher than the corresponding industry average were selected. While not all of these firms were small businesses (some had volatile stock prices or other special circumstances), they were the ones that had the highest costs of capital and were the least likely to benefit from increased SPVU standards.

Due to the higher costs of conducting business, benefits of SPVU standards for small and other high-capital-cost businesses are estimated to be slightly lower than for the general population of SPVU owners.

The results of DOE's LCC subgroup analysis are summarized in section V.B.1.b and described in detail in chapter 11 of the NOPR TSD.

*I. Manufacturer Impact Analysis*

1. Overview

DOE performed a manufacturer impact analysis (MIA) to estimate the financial impact of amended energy conservation standards on manufacturers of SPVUs and to calculate the potential impact of such standards on employment and manufacturing capacity.

The MIA has both quantitative and qualitative aspects. The quantitative portion of the MIA primarily relies on the Government Regulatory Impact Model (GRIM), an industry cash-flow model customized for this rulemaking. The key GRIM inputs are data on the industry cost structure, equipment costs, shipments, and assumptions about markups and conversion expenditures. The key output is the industry net present value (INPV). Different sets of assumptions (markup scenarios) will produce different results. The qualitative portion of the MIA addresses factors such as equipment characteristics, as well as industry and market trends. Chapter 12 of the NOPR TSD describes the complete MIA.

DOE calculated manufacturer impacts relative to a base case, defined as DOE adoption of the efficiency levels specified by ASHRAE Standard 90.1–2013. Consequently, when comparing the INPV impacts of the GRIM model, the baseline technology is at an efficiency of 10 EER/3.0 COP.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the SPVU industry which includes a top-down cost analysis of manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.,* sales, general, and administration (SG&A) expenses; research and development (R&D) expenses; and tax rates). DOE used public sources of information, including the 2008 Energy Conservation Program for Commercial and Industrial Equipment: Packaged Terminal Air Conditioner and Packaged Terminal Heat Pump Energy Conservation Standards Final Rule (73 FR 58772 (Oct. 7, 2008)), the 2011 Energy Conservation Standards Direct Final Rule for Residential Furnaces, Central Air Conditioners and Heat Pumps (76 FR 37408 (June 27, 2011)); Securities and Exchange Commission (SEC) 10–K filings;[87] corporate annual reports; the U.S. Census Bureau's Annual Survey of Manufacturers;[88] and Hoovers reports.[89]

In phase 2 of the MIA, DOE prepared an industry cash-flow analysis to quantify the potential impacts of an amended energy conservation standard. In general, new or more-stringent energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) Create a need for increased investment; (2) raise production costs per unit; and (3) alter revenue due to higher per-unit prices and possible changes in sales volumes.

In phase 3 of the MIA, DOE conducted structured, detailed interviews with a representative cross-section of manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. See section IV.I.3 for a description of the key issues manufacturers raised during the interviews.

Additionally, in phase 3, DOE evaluates subgroups of manufacturers that may be disproportionately impacted by standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash-flow analysis. For example, small manufacturers, niche players, or manufacturers exhibiting a cost structure that largely differs from the industry average could be more negatively affected. Thus, during Phase

[86] Morningstar, Inc., *Ibbotson SBBI 2013 Classic Yearbook. Market Results for Stocks, Bonds, Bills, and Inflation* 1926–2012 (2013).

[87] Filings & Forms, Securities and Exchange Commission (2013) (Available at: *http://www.sec.gov/edgar.shtml*) (Last accessed April 3, 2013).

[88] U.S. Census Bureau, Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2010) (Available at: *http://www.census.gov/manufacturing/asm/index.html*>) (Last accessed April 3, 2013).

[89] Hoovers | Company Information | Industry Information | Lists, D&B (2013) (Available at: *http://www.hoovers.com/*) (Last accessed April 3, 2013).

3, DOE analyzed small manufacturers as a subgroup.

The Small Business Administration (SBA) defines a small business for North American Industry Classification System (NAICS) code 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing,'' as having 750 employees or fewer. During its research, DOE identified one domestic company which manufactures equipment covered by this rulemaking and qualifies as a small business under the SBA definition. The small business subgroup is discussed in section VI.B of the preamble, and in chapter 12 of the NOPR TSD.

2. GRIM Analysis

As discussed previously, DOE uses the GRIM to quantify the changes in cash flow that result in a higher or lower industry value due to amended energy conservation standards. The GRIM analysis uses a discounted cash-flow methodology that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from amended energy conservation standards. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2014 (the base year of the analysis) and continuing to 2048. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. DOE applied a discount rate of 10.4 percent, which was derived from industry financials and then modified according to feedback received during manufacturer interviews.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the base case and each TSL (the standards case). Essentially, the difference in INPV between the base case and a standards case represents the financial impact of the amended energy conservation standard on manufacturers. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the NOPR TSD.

a. GRIM Key Inputs

i. Manufacturer Production Costs

Manufacturing a higher-efficiency product is typically more expensive than manufacturing a baseline product due to the use of more expensive components and larger quantities of raw materials. The changes in the manufacturer production cost (MPC) of the analyzed products can affect revenues, gross margins, and cash flow of the industry, making these product cost data key GRIM inputs for DOE's analysis.

In the MIA, DOE used the MPCs for each considered efficiency level calculated in the engineering analysis, as described in section IV.C and further detailed in chapter 5 of the NOPR TSD. In addition, DOE used information from its teardown analysis, described in section IV.C, to disaggregate the MPCs into material, labor, and overhead costs. To calculate the MPCs for products higher than the baseline, DOE added the incremental material, labor, and overhead costs from the engineering cost-efficiency curves to the baseline MPCs. These cost breakdowns and product mark-ups were revised based on manufacturer comments received during MIA interviews.

ii. Shipments Forecast

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of shipments by equipment class. For the base-case analysis, the GRIM uses the NIA base-case shipments forecasts from 2014 (the base year for the MIA analysis) to 2048 (the last year of the analysis period). In the shipments analysis, DOE estimates the distribution of efficiencies in the base case for all equipment classes. See section IV.G.2 for additional details.

For the standards-case shipment forecast, the GRIM uses the NIA standards-case shipment forecasts. The NIA assumes that product efficiencies in the base case that do not meet the energy conservation standard in the standards case ''roll up'' to meet the amended standard in the standard year. See section IV.G.2, above, for additional details.

iii. Product and Capital Conversion Costs

Amended energy conservation standards would cause manufacturers to incur one-time conversion costs to make necessary changes to their production facilities and bring product designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each equipment class. For the purpose of the MIA, DOE classified these conversion costs into two major groups: (1) Product conversion costs; and (2) capital conversion costs. Product conversion costs are one-time investments in research, development, testing, and marketing, focused on making product designs comply with the amended energy conservation standard. Capital conversion costs are one-time investments in property, plant, and equipment to adapt or change existing production facilities so that amended equipment designs can be fabricated and assembled.

To determine the level of capital conversion expenditures manufacturers would incur to comply with amended energy conservation standards, DOE gathered data on the level of capital investment required at each efficiency level during manufacturer interviews. DOE validated manufacturer comments through estimates of capital expenditure requirements derived from the product teardown analysis and engineering model described in section IV.C.

DOE assessed the product conversion costs at each considered efficiency level by integrating data from quantitative and qualitative sources. DOE considered market-share-weighted feedback from multiple manufacturers to determine conversion costs, such as R&D expenditures, at each efficiency level. Manufacturer numbers were aggregated to better reflect the industry as a whole and to protect confidential information.

In general, DOE assumes that all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the standard. The investment figures used in the GRIM can be found in section V.B.2 of the preamble. For additional information on the estimated product conversion and capital conversion costs, see chapter 12 of the NOPR TSD.

b. GRIM Scenarios

i. Markup Scenarios

As discussed previously, manufacturer selling prices (MSPs) include direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied non-production cost markups to the MPCs estimated in the engineering analysis for each equipment class and efficiency level. Modifying these markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) A

preservation of gross margin percentage; and (2) a preservation of operating profit. These scenarios lead to different markup values which, when applied to the input MPCs, result in varying revenue and cash flow impacts.

Under the preservation-of-gross-margin-percentage scenario, DOE applied a single uniform ''gross margin percentage'' markup across all efficiency levels. As production costs increase with efficiency, this scenario implies that the absolute dollar markup will increase as well. DOE assumed the non-production cost markup—which includes SG&A expenses, research and development expenses, interest, and profit—to be 1.28 for SPVU equipment. This markup is consistent with the one DOE assumed in the base case for the GRIM. Manufacturers tend to believe it is optimistic to assume that they would be able to maintain the same gross margin percentage markup as their production costs increase. Therefore, DOE assumes that this scenario represents a high bound to industry profitability under an amended energy conservation standard.

In the preservation-of-operating-profit scenario, as the cost of production goes up under a standards case, manufacturers are generally required to reduce their markups to a level that maintains base-case operating profit. DOE implemented this scenario in the GRIM by lowering the manufacturer markups at each TSL to yield approximately the same earnings before interest and taxes in the standards case as in the base case in the year after the compliance date of the amended standards. The implicit assumption behind this markup scenario is that the industry can only maintain its operating profit in absolute dollars after the standard.

3. Manufacturer Interviews

As part of the MIA, DOE discussed potential impacts of standards with three manufacturers of SPVUs. The interviewed manufacturers account for over 90 percent of the domestic SPVU market. In interviews, DOE asked manufacturers to describe their major concerns about this rulemaking. The following section highlights manufacturers' most significant concerns.

a. Size Constraints

Manufacturers noted that higher efficiency standards could force them to increase the size of their SPVU equipment to levels that are not acceptable to their customers. The manufacturers stated that some critical design options, such as increasing the amount of heat exchanger surface area, would necessitate an increase in cabinet size and footprint. For example, in the modular classroom and modular office markets, any additional floor space taken up by a larger SPVU could not be used by students and tenants. In the telecom market, manufacturers noted that telecom operators have standard-sized telecom shelters and current SPVU designs already make use of all available wall space. Any increase in size would force their customers to redesign the layout of the shelters and the complex telecommunications electronics housed therein. These size constraints would affect manufacturers if the amended standards are increased beyond the levels set in ASHRAE Standard 90.1–2013.

According to manufacturers, a change in cabinet size would be particularly problematic in the replacement market. Amended designs may no longer physically fit into existing installation locations. Some examples include units that are too wide to fit through standard-width doorways, that are too tall for the standard ceiling heights, and that protrude too far into classrooms or offices. Aside from the physical space constraints, manufacturers are concerned that air vents and wall plenums would no longer align. The use of sleeves or adaptors to reroute air flow would be unsightly, take up valuable space, and affect air flow in a manner that reduces product efficiency.

b. Alternative Products

Multiple manufacturers stated that a large increase in efficiency could lead to price increases that would cause their customers to consider alternative products, such as unitary systems or commercial roof top units. The manufacturers argued that these systems are often less convenient for end-users due to the need for extensive duct work, the use of long refrigerant lines, and/or the reduced ability to control the flow of fresh air. These manufacturers were concerned that an increase in the energy conservation standard would raise the SPVU prices to the point where end-users would accept the drawbacks of alternative products. DOE did not receive any quantitative comments on the price point at which unitary systems and commercial systems typically become cost-competitive alternatives.

c. Compliance Tolerances

Two manufacturers stated concerns about the tolerances required by compliance testing. They argued that SPVU manufacturers have no control over the variability in the performance of purchased components (such as compressors) or the variability of instrumentation within different test laboratories. As a result, the manufacturers stated that it is unrealistic for DOE to expect their products could test within the narrow confidence limits set forth at 10 CFR 429.43.

d. Constrained Innovation and Customization

Multiple manufacturers noted that complying with more-stringent energy conservation standards would draw time, resources, and focus away from innovation, customization, and customer responsiveness. Manufacturers believe that the design, engineering, and testing resources used to comply with amended standards would be better invested in developing features requested by their customers. Furthermore, multiple manufacturers stated that higher standards push manufacturers toward similar designs. Manufacturers argued that DOE's energy conservation standards constrain their ability to customize products in ways that maximize efficiency based on the end user's specific use-case.

*J. Emissions Analysis*

In the emissions analysis, DOE estimates the reduction in power sector emissions of carbon dioxide ($CO_2$), nitrogen oxides ($NO_X$), sulfur dioxide ($SO_2$), and mercury (Hg) from amended energy conservation standards for the considered SPVU equipment. In addition, DOE estimates emissions impacts in production activities (extracting, processing, and transporting fuels) that provide the energy inputs to power plants. These are referred to as ''upstream'' emissions. Together, these emissions account for the full-fuel-cycle (FFC). In accordance with DOE's FFC Statement of Policy (76 FR 51281 (August 18, 2011)), this FFC analysis includes impacts on emissions of methane ($CH_4$) and nitrous oxide ($N_2O$), both of which are recognized as greenhouse gases.

DOE primarily conducted the emissions analysis using emissions factors for $CO_2$ and most of the other gases derived from data in *AEO 2013*.[90]

[90] Emissions factors based on the *Annual Energy Outlook 2014* (*AEO 2014*), which became available too late for incorporation into this analysis, indicate that a significant decrease in the cumulative emission reductions of carbon dioxide and most other pollutants can be expected if the projections of power plant utilization assumed in *AEO 2014* are realized. For example, the estimated amount of cumulative emission reductions of $CO_2$ is expected to decrease by 33% from DOE's current estimate based on the projections in *AEO 2014* relative to *AEO 2013*. The monetized benefits from GHG reductions would likely decrease by a comparable

Combustion emissions of $CH_4$ and $N_2O$ were estimated using emissions intensity factors published by the Environmental Protection Agency (EPA) through its GHG Emissions Factors Hub.[91] DOE developed separate emissions factors for power sector emissions and upstream emissions. DOE also calculated site and upstream emissions from the additional use of natural gas associated with some of the SPVU efficiency levels. The method that DOE used to derive emissions factors is described in chapter 13 of the NOPR TSD.

For $CH_4$ and $N_2O$, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent ($CO_2$eq). Gases are converted to $CO_2$eq by multiplying the physical units by the gas's global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[92] DOE used GWP values of 28 for $CH_4$ and 265 for $N_2O$.

EIA prepares the *Annual Energy Outlook* using NEMS. Each annual version of NEMS incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2013* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of December 31, 2012.

$SO_2$ emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on $SO_2$ for affected EGUs in the 48 contiguous States and the District of Columbia (DC). $SO_2$ emissions from 28 eastern States and DC were also limited under the Clean Air Interstate Rule (CAIR; 70 FR 25162 (May 12, 2005)), which created an allowance-based trading program that operates along with the Title IV program. CAIR was remanded to the U.S. Environmental Protection Agency (EPA) by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect. See *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008; *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). In 2011 EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR.[93] The court ordered EPA to continue administering CAIR. The emissions factors used for this NOPR, which are based on *AEO 2013,* assume that CAIR remains a binding regulation through 2040.[94]

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess $SO_2$ emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in $SO_2$ emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on $SO_2$ emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector $SO_2$ emissions would occur as a result of standards.

Beginning around 2016, however, $SO_2$ emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the final MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for $SO_2$ (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, $SO_2$ emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2013* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce $SO_2$ emissions. Under the MATS, emissions will be far below the cap that would be established by CAIR, so it is unlikely that excess $SO_2$ emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in $SO_2$ emissions by any regulated EGU. Therefore, DOE believes that energy efficiency standards will reduce $SO_2$ emissions in 2016 and beyond.

CAIR established a cap on $NO_X$ emissions in 28 eastern States and the District of Columbia.[95] Energy conservation standards are expected to have little effect on $NO_X$ emissions in those States covered by CAIR because excess $NO_X$ emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in $NO_X$ emissions. However, standards would be expected to reduce $NO_X$ emissions in the States not affected by the caps, so DOE estimated $NO_X$ emissions reductions from the standards considered in the NOPR for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps, and as such, DOE's energy conservation standards would likely reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO 2013,* which incorporates MATS.

### *K. Monetizing Carbon Dioxide and Other Emissions Impacts*

As part of the development of this NOPR, DOE considered the estimated monetary benefits from the reduced emissions of $CO_2$ and $NO_X$ that are expected to result from each of the considered efficiency levels. In order to make this calculation similar to the calculation of the NPV of customer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each efficiency level. This section summarizes the basis for the monetary values used for $CO_2$ and $NO_X$ emissions and presents the values considered in this rulemaking.

For this NOPR, DOE is relying on a set of values for the social cost of carbon (SCC) that was developed by an interagency process. A summary of the basis for those values is provided in the

amount. DOE plans to use emissions factors based on the most recent *AEO* available for the next phase of this rulemaking, which may or may not be *AEO 2014,* depending on the timing of the issuance of the next rulemaking document.

[91] See: *http://www.epa.gov/climateleadership/inventory/ghg-emissions.html.*

[92] IPCC, 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Chapter 8.

[93] See *EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012).

[94] On April 29, 2014, the U.S. Supreme Court reversed the judgment of the D.C. Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion. The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR. See *EPA* v. *EME Homer City Generation,* No 12–1182, slip op. at 32 (U.S. April 29, 2014). Because DOE is using emissions factors based on *AEO 2013* for this NOPR, the analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR is not relevant for the purpose of DOE's analysis of $SO_2$ emissions.

[95] CSAPR also applies to $NO_X$ and it would supersede the regulation of $NO_X$ under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of $NO_X$ emissions is slight.

following subsection, and a more detailed description of the methodologies used is provided as an appendix to chapter 14 of the NOPR TSD.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of carbon dioxide. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in carbon dioxide emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b)(6) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), agencies must, to the extent permitted by law, assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing $CO_2$ emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed the SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of carbon dioxide emissions, the analyst faces a number of challenges. A recent report from the National Research Council points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of greenhouse gases; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing carbon dioxide emissions. The agency can estimate the benefits from reduced emissions in any future year by multiplying the change in emissions in that year by the SCC value appropriate for that year. The net present value of the benefits can then be calculated by multiplying the future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced $CO_2$ emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of $CO_2$. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specifically, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: the FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change. Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from three integrated assessment models, at discount rates of 2.5 percent, 3 percent, and 5 percent. The fourth set, which represents the 95th-percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from climate change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects, although preference is given to consideration of the global benefits of reducing $CO_2$ emissions.

Table IV.9 presents the values in the 2010 interagency group report,[96] which is reproduced in appendix 14–A of the NOPR TSD.

TABLE IV.9—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[In 2007 dollars per metric ton $CO_2$]

| Year | Discount rate % | | | |
|---|---|---|---|---|
| | 5 | 3 | 2.5 | 3 |
| | Average | Average | Average | 95th percentile |
| 2010 | 4.7 | 21.4 | 35.1 | 64.9 |
| 2015 | 5.7 | 23.8 | 38.4 | 72.8 |
| 2020 | 6.8 | 26.3 | 41.7 | 80.7 |
| 2025 | 8.2 | 29.6 | 45.9 | 90.4 |
| 2030 | 9.7 | 32.8 | 50.0 | 100.0 |
| 2035 | 11.2 | 36.0 | 54.2 | 109.7 |
| 2040 | 12.7 | 39.2 | 58.4 | 119.3 |
| 2045 | 14.2 | 42.1 | 61.7 | 127.8 |
| 2050 | 15.7 | 44.9 | 65.0 | 136.2 |

The SCC values used for the NOPR were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature.[97] (See appendix 14–B of the NOPR TSD for further information.) Table IV.10 shows the updated sets of SCC estimates in five year increments from 2010 to 2050. Appendix 14–B of the NOPR TSD provides the full set of SCC estimates. The central value that emerges is the average SCC across models at the 3 percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

TABLE IV.10—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE, 2010–2050

[In 2007 dollars per metric ton $CO_2$]

| Year | Discount rate % | | | |
|---|---|---|---|---|
| | 5 | 3 | 2.5 | 3 |
| | Average | Average | Average | 95th percentile |
| 2010 | 11 | 32 | 51 | 89 |
| 2015 | 11 | 37 | 57 | 109 |
| 2020 | 12 | 43 | 64 | 128 |
| 2025 | 14 | 47 | 69 | 143 |
| 2030 | 16 | 52 | 75 | 159 |
| 2035 | 19 | 56 | 80 | 175 |
| 2040 | 21 | 61 | 86 | 191 |
| 2045 | 24 | 66 | 92 | 206 |
| 2050 | 26 | 71 | 97 | 220 |

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable since they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned above points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.

In summary, in considering the potential global benefits resulting from reduced $CO_2$ emissions, DOE used the values from the 2013 interagency report, adjusted to 2013$ using the Gross Domestic Product price deflator. For each of the four cases specified, the values used for emissions in 2015 were $12.0, $40.5, $62.4, and $119 per metric ton avoided (values expressed in 2013$). DOE derived values after 2050 using the relevant growth rates for the 2040–2050 period in the interagency update.

DOE multiplied the $CO_2$ emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value

[96] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* Interagency Working Group on Social Cost of Carbon, United States Government (February 2010) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf).*

[97] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised November 2013) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf*).

of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Valuation of Other Emissions Reductions

As noted above, DOE has taken into account how amended energy conservation standards would reduce $NO_X$ emissions in those 22 States not affected by emissions caps. DOE estimated the monetized value of $NO_X$ emissions reductions resulting from each of the TSLs considered for the NOPR based on estimates found in the relevant scientific literature. Estimates of monetary value for reducing $NO_X$ from stationary sources range from $476 to $4,893 per ton (2013$).[98] DOE calculated monetary benefits using a medium value for $NO_X$ emissions of $2,684 per short ton (in 2013$), and real discount rates of 3 percent and 7 percent.

DOE is evaluating appropriate monetization of avoided $SO_2$ and Hg emissions in energy conservation standards rulemakings. It has not included such monetization in the current analysis.

*L. Utility Impact Analysis*

In the utility impact analysis, DOE analyzes the changes in electric installed capacity and generation that result for each trial standard level. The utility impact analysis uses a variant of NEMS,[99] which is a public domain, multi-sectored, partial equilibrium model of the U.S. energy sector. DOE uses a variant of this model, referred to as NEMS–BT,[100] to account for selected utility impacts of new or amended energy conservation standards. DOE's analysis consists of a comparison between model results for the most recent *AEO* Reference Case and for cases in which energy use is decremented to reflect the impact of potential standards. The energy savings inputs associated with each TSL come from the NIA. Chapter 15 of the NOPR TSD describes the utility impact analysis.

*M. Employment Impact Analysis*

Employment impacts include direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards; the MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the jobs created or eliminated in the national economy due to: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased customer spending on the purchase of new products; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[101] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing customer utility bills. Because reduced customer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, based on the BLS data alone, DOE believes net national employment may increase because of shifts in economic activity resulting from amended energy conservation standards for SPVUs.

For the amended standard levels considered in the NOPR, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 3.1.1 (ImSET).[102] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among the 187 sectors. ImSET's national economic I–O structure is based on a 2002 U.S. benchmark table, specially aggregated to the 187 sectors most relevant to industrial, commercial, and residential building energy use. DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run. For the NOPR, DOE used ImSET only to estimate short-term (through 2023) employment impacts.

For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

## V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to potential energy conservation standards for SPVUs in this rulemaking. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for SPVUs, and the proposed standard levels that DOE sets forth in the NOPR. Additional details regarding DOE's analyses are contained in the TSD supporting this NOPR.

*A. Trial Standard Levels*

DOE developed Trial Standard Levels (TSLs) that combine efficiency levels for each equipment class of SPVACs and SPVHPs. Table V.1 presents the efficiency EERs for each equipment class in the EPCA and ASHRAE baseline and each TSL. TSL 1 consists of efficiency level 1 for equipment classes less than 65,000 Btu/h. TSL 2 consists

[98] U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, *2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities,* Washington, DC. Available at: *www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/2006_cb/2006_cb_final_report.pdf.*

[99] For more information on NEMS, refer to the U.S. Department of Energy, Energy Information Administration documentation. A useful summary is *National Energy Modeling System: An Overview 2003,* DOE/EIA–0581(2003), March, 2003.

[100] DOE/EIA approves use of the name ''NEMS'' to describe only an official version of the model without any modification to code or data. Because this analysis entails some minor code modifications and the model is run under various policy scenarios that are variations on DOE/EIA assumptions, DOE refers to it by the name ''NEMS–BT'' (''BT'' is DOE's Building Technologies Program, under whose aegis this work has been performed).

[101] *See* Bureau of Economic Analysis, ''Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II),'' U.S. Department of Commerce (1992).

[102] M. J. Scott, O. V. Livingston, P. J. Balducci, J. M. Roop, and R. W. Schultz, *ImSET 3.1: Impact of Sector Energy Technologies,* PNNL–18412, Pacific Northwest National Laboratory (2009) (Available at: *www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf*).

of efficiency level 2 for equipment classes less than 65,000 Btu/h. TSL 3 consists of efficiency level 3 for equipment classes less than 65,000 Btu/h. TSL 4 consists of efficiency level 4 (max-tech) for equipment classes less than 65,000 Btu/h. For SPVACs between 65,000 and 135,000 Btu/h, there are no models on the market above the ASHRAE level, and for SPVHPs between 65,000 and 135,000 Btu/h and SPVUs greater than or equal to 135,000 Btu/h and less than 240,000 Btu/h, there are no models on the market at all, and, therefore, DOE had no basis with which to develop higher efficiency levels or conduct analyses. As a result, for each TSL, the EER (and COP) for these equipment classes is shown as the ASHRAE standard level of 10.0 EER (and 3.0 COP for heat pumps).

TABLE V.1—EPCA BASELINE, ASHRAE BASELINE, AND TRIAL STANDARD LEVELS FOR SPVUS

| Equipment class | EPCA baseline | ASHRAE baseline | Trial standard levels EER(/COP) | | | |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 |
| SPVAC <65,000 Btu/h | 9.0 | 10.0 | 10.5 | 11.0 | 11.75 | 12.3 |
| SPVHP <65,000 Btu/h | 9.0/3.0 | 10.0/3.0 | 10.5/3.2 | 11.0/3.3 | 11.75/3.9 | 12.3/3.9 |
| SPVAC ≥65,000 Btu/h and <135,000 Btu/h | 8.9 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| SPVHP ≥65,000 Btu/h and <135,000 Btu/h | 8.9/3.0 | 10.0/3.0 | 10.0/3.0 | 10.0/3.0 | 10.0/3.0 | 10.0/3.0 |
| SPVAC ≥135,000 Btu/h and <240,000 Btu/h | 8.6 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| SPVHP ≥135,000 Btu/h and <240,000 Btu/h | 8.6/2.9 | 10.0/3.0 | 10.0/3.0 | 10.0/3.0 | 10.0/3.0 | 10.0/3.0 |

For clarity, DOE has also summarized the different design options that would be introduced across equipment classes at each TSL in Table V.2 below.

TABLE V.2—DESIGN OPTIONS AT EACH TRIAL STANDARD LEVEL FOR SPVUS

| Equipment class | ASHRAE baseline | Trial standard levels | | | |
|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 |
| **Design Options for Each TSL (options are cumulative—TSL 4 includes all preceding options)** | | | | | |
| SPVAC <65,000 Btu/h | BPM Indoor motor, Increased HX face area. | Addition of HX tube row. | Addition of HX tube row. | Improved Compressor Efficiency, Increased HX face area. | BPM Outdoor motor, High-Efficiency outdoor fan blade, Dual condensing heat exchangers. |
| SPVHP <65,000 Btu/h | BPM Indoor motor, Increased HX face area. | Addition of HX tube row. | Addition of HX tube row. | Improved Compressor Efficiency, Increased HX face area. | BPM Outdoor motor, High-Efficiency outdoor fan blade, Dual condensing heat exchangers. |
| *SPVAC ≥65,000 Btu/h and <135,000 Btu/h. | BPM Indoor motor, Increased HX face area. | No change | No change | No change | No change. |
| *SPVHP ≥65,000 Btu/h and <135,000 Btu/h. | BPM Indoor motor, Increased HX face area. | No change | No change | No change | No change. |
| SPVAC ≥135,000 Btu/h and <240,000 Btu/h. | No change | No change | No change | No change | No change. |
| SPVHP ≥135,000 Btu/h and <240,000 Btu/h. | No change | No change | No change | No change | No change. |

*TSL1 through TSL4 are marked as "no change" because for these equipment classes, each TSL consists of the ASHRAE efficiency level.

*B. Economic Justification and Energy Savings*

1. Economic Impacts on Commercial Consumers

a. Life-Cycle Cost and Payback Period

Customers affected by new standards usually incur higher purchase prices and lower operating costs. DOE evaluates these impacts on individual customers by calculating changes in LCC and the PBP associated with the TSLs. The results of the LCC analysis for each TSL were obtained by comparing the installed and operating costs of the equipment in the base-case scenario (EPCA and ASHRAE baselines) against the standards-case scenarios at each TSL. Inputs used for calculating the LCC include total installed costs (*i.e.,* equipment price plus installation costs), operating expenses (*i.e.,* annual energy savings, energy prices, energy price trends, repair costs, and maintenance costs), equipment lifetime, and discount rates.

The LCC analysis is carried out using Monte Carlo simulations. Consequently, the results of the LCC analysis are

distributions covering a range of values, as opposed to a single deterministic value. DOE presents the mean or median values, as appropriate, calculated from the distributions of results. The LCC analysis also provides information on the percentage of consumers for whom an increase in the minimum efficiency standard would have a positive impact (net benefit), a negative impact (net cost), or no impact.

DOE also performed a PBP analysis as part of the LCC analysis. The PBP is the number of years it would take for the consumer to recover the increased costs of higher-efficiency equipment as a result of energy savings based on the operating cost savings. The PBP is an economic benefit-cost measure that uses benefits and costs without discounting. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

As described in section IV.G, DOE used a ''roll-up'' scenario in this rulemaking. Under the roll-up scenario, DOE assumes that the market shares of the efficiency levels (in the ASHRAE base-case) that do not meet the standard level under consideration would be ''rolled up'' into (meaning ''added to'') the market share of the efficiency level at the standard level under consideration, and the market shares of efficiency levels that are above the standard level under consideration would remain unaffected. Customers in the ASHRAE base-case scenario who buy the equipment at or above the TSL under consideration, would be unaffected if the standard were to be set at that TSL. Customers in the ASHRAE base-case scenario who buy equipment below the TSL under consideration would be affected if the standard were to be set at that TSL. Among these affected customers, some may benefit from lower LCCs of the equipment and some may incur net cost due to higher LCCs, depending on the inputs to the LCC analysis such as electricity prices, discount rates, installation costs, and markups.

DOE's LCC and PBP analyses provided key outputs for each efficiency level above the baseline (*i.e.,* efficiency levels more stringent than those in ASHRAE 90.1–2013), as reported in Table V.3 and Table V.4.[103] DOE's results indicate that for SPVAC units, affected customer savings are positive at TSLs 1 and 2, and for SPVHP units, customer savings are positive at TSLs 1, 2, and 3. LCC and PBP results using the EPCA baseline are available in appendix 8B of the NOPR TSD.

TABLE V.3—SUMMARY LCC AND PBP RESULTS FOR SINGLE-PACKAGE VERTICAL AIR CONDITIONERS, <65,000 BTU/H CAPACITY

| TSL | Efficiency level | Life-cycle cost 2013$ | | | Life-cycle cost savings | | | | Payback period years |
|---|---|---|---|---|---|---|---|---|---|
| | | Installed cost | Discounted operating cost | LCC | Average savings 2013$* | % of customers that experience | | | |
| | | | | | | Net cost | No impact | Net benefit | Median |
| | ASHRAE Baseline | 4,795 | 12,335 | 17,130 | ..... | ..... | ..... | ..... | ..... |
| 1 | 1 | 4,939 | 12,074 | 17,013 | 116 | 25 | 26 | 49 | 7.9 |
| 2 | 2 | 5,083 | 11,839 | 16,922 | 179 | 37 | 1 | 62 | 8.4 |
| 3 | 3 | 5,546 | 11,578 | 17,123 | (24) | 62 | 0 | 38 | 14.4 |
| 4 | 4 | 6,407 | 11,516 | 17,924 | (825) | 87 | 0 | 13 | 27.3 |

*Parentheses indicate negative values.

TABLE V.4—SUMMARY LCC AND PBP RESULTS FOR SINGLE-PACKAGE VERTICAL HEAT PUMPS, <65,000 BTU/H CAPACITY

| TSL | Efficiency level | Life-cycle cost 2013$ | | | Life-cycle cost savings | | | | Payback period years |
|---|---|---|---|---|---|---|---|---|---|
| | | Installed cost | Discounted operating cost | LCC | Average savings 2013$ * | % of customers that experience | | | |
| | | | | | | Net cost | No impact | Net benefit | Median |
| | ASHRAE Baseline | 5,363 | 30,464 | 35,827 | ..... | ..... | ..... | ..... | ..... |
| 1 | 1 | 5,529 | 29,939 | 35,468 | 358 | 0 | 26 | 74 | 4.1 |
| 2 | 2 | 5,695 | 29,618 | 35,313 | 424 | 1 | 1 | 98 | 4.8 |
| 3 | 3 | 6,224 | 28,690 | 34,914 | 819 | 7 | 0 | 92 | 6.2 |
| 4 | 4 | 7,210 | 28,698 | 35,909 | (177) | 68 | 0 | 32 | 13.6 |

*Parentheses indicate negative values.

b. Life-Cycle Cost Subgroup Analysis

Using the LCC spreadsheet model, DOE estimated the impacts of the TSLs on the following consumer subgroups: (1) Mining and construction firms using modular temporary office buildings; (2) public education providers using portable classrooms; and (3) small businesses and other businesses with high risk premiums (often due to volatility in their share price and reliance on equity rather than debt financing) and high discount rates (described as ''high rate'' subgroup in this section). DOE analyzed this final subgroup because this group has typically had less access to capital than other businesses, which results in higher financing costs and a higher discount rate than the industry average. Businesses with high discount rates need an earlier return on investment than other businesses and, other things equal, would place a lower value on future energy savings relative to immediate returns than would other businesses. Consequently, the present

[103] Because there are no units above the ASHRAE baseline in the classes greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h, and no units greater than or equal to 135,000 Btu/h and less than 240,000 Btu/h, there are no LCC savings for these classes.

value of future savings is lower for these businesses. DOE estimated the average LCC savings and median PBP using the ASHRAE baseline for the high rate subgroup compared with average SPVU consumers, as shown in Table V.5 and Table V.6 below.

The results of the life-cycle cost subgroup analysis indicate that for SPVAC units, the three subgroups all fare slightly worse than the average consumer, with those subgroups being expected to have lower LCC savings and longer payback periods than average. In the cases of education and mining and construction customers, this occurs mainly because although they pay the same installed cost premium for more-efficient SPVAC units, they use and save less energy than do average customers and so benefit less from the energy savings. In the case of mining and construction customers, LCC savings are also further reduced by the effects of their higher discount rate, which further reduces the value of their already-smaller energy savings. The picture is somewhat more mixed for SPVHPs, with the high-rate subgroup and construction/mining firms generally faring worse, and education generally faring somewhat better than the average consumer. Education SPVHP customers save more energy than the average customer, whereas the opposite is true for education customers for air conditioners. Thus, even though they pay a lower price on average, education customers' energy cost savings are higher than average, and they have a lower discount rate on those savings, making them worth more. In combination, these two factors make their LCC savings higher than those of the average SPVHP customer. The construction and mining SPVHP customers save less energy than the average customer, and their higher discount rate makes these savings worth less to them. Finally, since high discount rate customers save the same amount of energy as the average customer, they only experience the effects of their higher discount rate, which moderately reduces their LCC savings and has no effect on PBP. Chapter 11 of the NOPR TSD provides more detailed discussion on the LCC subgroup analysis and results.

TABLE V.5—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, SPVAC <65,000 BTU/H

| TSL | Energy efficiency level | LCC Savings 2013$* | | | | Median payback period years | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Construction and mining | Education | High rate | All | Construction and mining | Education | High rate | All |
| 1 | 1 | (27) | 98 | 101 | 116 | 13.8 | 9.6 | 7.9 | 7.9 |
| 2 | 2 | (60) | 148 | 153 | 179 | 14.7 | 10.1 | 8.3 | 8.4 |
| 3 | 3 | (429) | (92) | (66) | (24) | 26.7 | 17.5 | 14.3 | 14.4 |
| 4 | 4 | (1,323) | (944) | (867) | (825) | 55.0 | 33.5 | 28.1 | 27.3 |

*Parentheses indicate negative values.

TABLE V.6—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, SPVHP <65,000 BTU/H

| TSL | Energy efficiency level | LCC savings 2013$* | | | | Median payback period years | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Construction and mining | Education | High rate | All | Construction and mining | Education | High rate | All |
| 1 | 1 | 259 | 440 | 342 | 358 | 4.2 | 3.8 | 4.1 | 4.1 |
| 2 | 2 | 274 | 549 | 403 | 424 | 5.4 | 4.6 | 4.8 | 4.8 |
| 3 | 3 | 527 | 1,056 | 769 | 819 | 6.3 | 6.1 | 6.2 | 6.2 |
| 4 | 4 | (488) | 83 | (222) | (177) | 14.5 | 12.7 | 13.6 | 13.6 |

*Parentheses indicate negative values.

c. Rebuttable Presumption Payback

As discussed in section III.E.2, EPCA provides a rebuttable presumption that, in essence, an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the consumer, manufacturer, Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i) and 6316(e)(1). The results of this analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification. For comparison with the more detailed analytical results, DOE calculated a rebuttable presumption payback period for each TSL. Table V.7 shows the rebuttable presumption payback periods for the representative equipment classes using the ASHRAE baseline. No equipment class has a rebuttable presumption payback period of less than 3 years.

TABLE V.7—REBUTTABLE PRESUMPTION PAYBACK PERIODS FOR SPVU EQUIPMENT CLASSES

| Equipment class | Rebuttable presumption payback years | | | |
|---|---|---|---|---|
| | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
| SPVAC <65,000 Btu/h | 5.2 | 5.4 | 8.6 | 14.8 |
| SPVHP <65,000 Btu/h | 3.2 | 4.0 | 4.8 | 9.5 |

2. Economic Impact on Manufacturers

As noted in section IV.I, DOE performed a manufacturer impact analysis to estimate the impact of amended energy conservation standards on manufacturers of SPVUs. DOE calculated manufacturer impacts relative to a base case, defined as DOE adoption of the efficiency levels specified by ASHRAE Standard 90.1–2013. Consequently, when comparing the INPV impacts under the GRIM model, the baseline technology is at an efficiency of 10 EER/3.0 COP. The following subsection describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the NOPR TSD explains the analysis in further detail, and also contains results using the EPCA baseline.

a. Industry Cash-Flow Analysis Results

Table V.8 depicts the estimated financial impacts on manufacturers and the conversion costs that DOE expects manufacturers would incur at each TSL. The financial impacts on manufacturers are represented by changes in industry net present value.

The impact of potential amended energy conservation standards were analyzed under two markup scenarios: (1) The preservation of gross margin percentage; and (2) the preservation of operating profit. As discussed in section IV.I.2.b, DOE considered the preservation of gross margin percentage scenario by applying a uniform ''gross margin percentage'' markup across all efficiency levels. As production cost increases with efficiency, this scenario implies that the absolute dollar markup will increase. DOE assumed the nonproduction cost markup—which includes SG&A expenses, research and development expenses, interest, and profit to be a factor of 1.28. These markups are consistent with the ones DOE assumed in the engineering analysis and in the base case of the GRIM. Manufacturers have indicated that it is optimistic to assume that as their production costs increase in response to an amended energy conservation standard, they would be able to maintain the same gross margin percentage markup. Therefore, DOE assumes that this scenario represents a high bound to industry profitability under an amended energy conservation standard.

The preservation of operating profit scenario reflects manufacturer concerns about their inability to maintain their margins as manufacturing production costs increase to reach more-stringent efficiency levels. In this scenario, while manufacturers make the necessary investments required to convert their facilities to produce new standards-compliant equipment, operating profit does not change in absolute dollars and decreases as a percentage of revenue.

Each of the modeled scenarios results in a unique set of cash flows and corresponding industry values at each TSL. In the following discussion, the INPV results refer to the difference in industry value between the base case and each standards case that result from the sum of discounted cash flows from the base year 2014 through 2048, the end of the analysis period. To provide perspective on the short-run cash flow impact, DOE includes in the discussion of the results a comparison of free cash flow between the base case and the standards case at each TSL in the year before amended standards would take effect. This figure provides an understanding of the magnitude of the required conversion costs relative to the cash flow generated by the industry in the base case.

TABLE V.8—MANUFACTURER IMPACT ANALYSIS RESULTS FOR SPVUS

| | Units | Base case | Trial standard level* | | | |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 |
| INPV | $M | 36.5 | 32.4 to 34.2 | 33.2 to 38.0 | 27.5 to 49.2 | 3.0 to 47.4 |
| Change in INPV | $M | ..... | (4.1) to (2.3) | (3.3) to 1.5 | (9.0) to 12.7 | (33.4) to 10.9 |
| | % | ..... | (11.3) to (6.3) | (9.0) to 4.1 | (24.7) to 34.9 | (91.7) to 29.9 |
| Free Cash Flow (FCF) in 2018 | $M | 2.9 | 0.6 | 0.4 | (2.1) | (9.5) |
| Change in FCF in 2018 | $M | ..... | (2.3) | (2.5) | (5.0) | (12.4) |
| | % | ..... | (78.2) | (85.0) | (174.0) | (428.2) |
| Conversion Costs | $M | ..... | 6.5 | 7.2 | 16.1 | 33.9 |

*Parentheses indicate negative values.

At TSL 1, the standard for all equipment classes with capacity less than 65,000 Btu/h is set at 10.5 EER/3.2 COP. The standard for all equipment classes with capacity greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h and greater than or equal to 135,000 Btu/h and less than 240,000 Btu/h is set at the baseline (*i.e.,* 10.0 EER/3.0 COP). DOE estimates the change in INPV to range from −$4.1 to −$2.3 million, or a change of −11.3 percent to −6.3 percent. At this level, free cash flow is estimated to decrease to $0.6 million, or a decrease of 78.2 percent compared to the base-case value of $2.9 million in the year 2018, the year before the standards year. DOE does expect a standard at this level to require changes to manufacturing equipment, thereby resulting in capital conversion costs. The engineering analysis suggests that manufacturers would reach this amended standard by increasing heat exchanger size. Roughly sixty-five percent of the SPVU models listed in the AHRI Directory would need to be updated to meet this amended standard level. Estimated industry conversion costs total $6.5 million.

At TSL 2, the standard for all equipment classes with capacity less than 65,000 Btu/h is set at 11.0 EER/3.3 COP. The standards for all equipment classes with capacity greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h and greater than or equal to 135,000 Btu/h and less than 240,000 Btu/h remain at baseline as in TSL 1. DOE estimates impacts on INPV to range from $1.5 million to −$3.3 million, or a change in INPV of 4.1 percent to −9.0 percent. At this level, free cash flow is estimated to decrease to $0.4, or a change of −85.0 percent compared to the base-case value of $2.9 million in the year 2018. Based on the engineering analysis, DOE expects manufacturers to reach this level of efficiency by further increasing the size of the heat exchanger. Product updates and associated testing expenses would further increase conversion costs for the industry to $7.2 million.

At TSL 3, the standard increases to 11.75 EER/3.9 COP for equipment with capacity less than 65,000 Btu/h. The standards for SPVAC and SPVHP equipment with capacity greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h and greater than or equal to 135,000 Btu/h and less than 240,000 Btu/h remain at baseline as in TSLs 1

and 2. DOE estimates impacts on INPV to range from $12.7 million to −9.0 million, or a change in INPV of 34.9 percent to −24.7 percent. At this level, free cash flow is estimated to decrease to less than zero, to −$2.1 million, or a change of −174.0 percent compared to the base-case value of $2.9 million in the year 2018. The engineering analysis suggests that manufacturers would reach this amended standard by once again increasing heat exchanger size and by switching to more-efficient two-stage compressors. Manufacturers that produce heat exchangers in-house may need to add coil fabrication equipment to accommodate the size of the heat exchanger necessary to meet the standard. Additionally, the new heat exchanger size may require manufacturers to invest additional capital into their sheet metal bending lines. Ninety-four percent of the SPVU models listed in the AHRI Directory would require redesign at this amended standard level. DOE estimates total conversion costs to be $16.1 million for the industry.

At TSL 4, the standard increases to 12.3 EER/COP of 3.9 for SPVAC and SPVHP equipment with capacity less than 65,000 Btu/h. The standards for SPVAC and SPVHP equipment with capacity greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h and greater than or equal to 135,000 Btu/h and less than 240,000 Btu/h remain at baseline as in TSLs 1, 2, and 3. DOE estimates impacts on INPV to range from $10.9 million to −33.4 million, or a change in INPV of 29.9 percent to −91.7 percent. At this level, free cash flow is estimated to decrease to −$9.5 million, or a decrease of 428.2 percent compared to the base-case value of $2.9 million in the year 2018. TSL 4 represents the max-tech standard level. DOE expects manufacturers to meet the amended standard by dramatically increasing the size of the evaporating heat exchanger and incorporating two condensing heat exchangers. Ninety-eight percent of all SPVU models listed in the AHRI Directory would require redesign at this amended standard level. Additionally, DOE expects designs to use BPMs for both the indoor and outdoor motors. Total conversion costs are expected to reach $33.9 million for the industry.

b. Impacts on Direct Employment

To quantitatively assess the potential impacts of amended energy conservation standards on direct employment, DOE used the GRIM to estimate the domestic labor expenditures and number of direct employees in the base case and at each TSL from 2014 through 2048. DOE used statistical data from the U.S. Census Bureau's 2011 Annual Survey of Manufacturers,[104] the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic direct employment levels. Labor expenditures related to manufacturing of the product are a function of the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the MPCs by the labor percentage of MPCs. DOE estimates that 95 percent of SPVU units are produced domestically.

The total labor expenditures in the GRIM were then converted to domestic production employment levels by dividing production labor expenditures by the annual payment per production worker (production worker hours times the labor rate found in the U.S. Census Bureau's 2011 Annual Survey of Manufacturers). The production worker estimates in this section only cover workers up to the line-supervisor level who are directly involved in fabricating and assembling a product within an original equipment manufacturer (OEM) facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific products covered by this rulemaking. To estimate an upper bound to employment change, DOE assumes all domestic manufacturers would choose to continue producing products in the U.S. and would not move production to foreign countries. To estimate a lower bound to employment, DOE estimated the maximum portion of the industry that would choose leave the industry rather than make the necessary product conversions. A complete description of the assumptions used to generate these upper and lower bounds can be found in chapter 12 of the NOPR TSD.

Using the GRIM, DOE estimates that in the absence of amended energy conservation standards, there would be 454 domestic production workers for SPVU equipment. As noted previously, DOE estimates that 95 percent of SPVU units sold in the United States are manufactured domestically. Table V.9 below shows the range of the impacts of potential amended energy conservation standards on U.S. production workers of SPVUs.

TABLE V.9—POTENTIAL CHANGES IN THE TOTAL NUMBER OF SPVU PRODUCTION WORKERS IN 2019

| | Trial standard level* | | | | |
|---|---|---|---|---|---|
| | Base case | 1 | 2 | 3 | 4 |
| Total Number of Domestic Production Workers in 2019 | 412 | 389 to 421 | 389 to 432 | 339 to 461 | 285 to 559 |
| Potential Changes in Domestic Production Workers in 2019 | | (23) to 9 | (23) to 20 | (73) to 49 | (127) to 147 |

*Parentheses indicate negative values.

c. Impacts on Manufacturing Capacity

According to SPVU manufacturers interviewed, demand for SPVUs, which roughly correlates to trends in telecommunications spending and construction of new schools, peaked in the 2001–2006 time frame. As a result, excess capacity exists in the industry today.

Except at the max-tech level, any necessary redesign of SPVU models would not fundamentally change the assembly of the equipment. Any bottlenecks are more likely to come from the redesign, testing, and certification process rather than from production capacity. To that end, some interviewed manufacturers expressed concern that the redesign of all products to include BPM motors would require a significant portion of their engineering resources, taking resources away from customer responsiveness and R&D efforts. Furthermore, some manufacturers noted that an amended

[104] U.S. Census Bureau, Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2011) (Available at *http://www.census.gov/manufacturing/asm/index.html*).

standard requiring BPMs would monopolize their testing resources and facilities—to their point when some manufacturers anticipated the need to build new psychometric test labs just to have enough in-house testing capacity to meet the amended standard. Once all products have been redesigned to meet an amended energy conservation standard, manufacturers did not anticipate any production constraints.

d. Impacts on Subgroups of Manufacturers

Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. As discussed in section IV.I using average cost assumptions developed for an industry cash-flow estimate is inadequate to assess differential impacts among manufacturer subgroups.

For SPVU equipment, DOE identified and evaluated the impact of amended energy conservation standards on one subgroup, specifically small manufacturers. The SBA defines a ''small business'' as having 750 employees or less for NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' Based on this definition, DOE identified two domestic manufacturers in the industry that qualifies as a small business. For a discussion of the impacts on the small manufacturer subgroup, see the regulatory flexibility analysis in section VI.B of this NOPR and chapter 12 of the NOPR TSD.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of several impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. Multiple regulations affecting the same manufacturer can strain profits and can lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

For the cumulative regulatory burden analysis, DOE looks at other regulations that could affect SPVU manufacturers that will take effect approximately three years before or after the compliance date of amended energy conservation standards for these products. For equipment with proposed standards that are more stringent than those contained in ASHRAE Standard 90.1–2013, the compliance date is four years after publication of an energy conservation standards final rule (*i.e.,* compliance date assumed to be 2019 for the purposes of MIA). For equipment with proposed standards that are set at the levels contained in ASHRAE Standard 90.1–2013, the compliance date is two or three years after the effective date of the requirements in ASHRAE Standard 90.1–2013, depending on equipment size (*i.e.,* 2015 or 2016). For this cumulative regulatory burden analysis, DOE considered regulations that could affect SPVU manufacturers that take effect from 2012 to 2022, to account for the range of compliance years.

In interviews, manufacturers cited Federal regulations on equipment other than SPVUs that contribute to their cumulative regulatory burden. In particular, manufacturers noted that some of them also produce residential central air conditioners and heat pumps, residential furnaces, room air conditioners, and water-heating equipment. These products have amended energy conservation standards that go into effect within three years of the compliance date for any amended SPVU standards. The compliance years and expected industry conversion costs are listed below:

TABLE V.10—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING SPVU MANUFACTURERS

| Federal energy conservation standards | Approximate compliance date | Estimated total industry conversion expense |
|---|---|---|
| 2008 Packaged Terminal Air Conditioners and Heat Pumps 73 FR 58772 (Oct. 7, 2008) | 2012 | $33.7M (2007$). |
| 2011 Room Air Conditioners 76 FR 22454 (April 21, 2011); 76 FR 52854 (August 24, 2011) | 2014 | $171M (2009$). |
| 2007 Residential Furnaces & Boilers 72 FR 65136 (Nov. 19, 2007) | 2015 | $88M (2006$).* |
| 2011 Residential Furnaces 76 FR 37408 (June 27, 2011); 76 FR 67037 (Oct. 31, 2011) | 2015 | $2.5M (2009$).** |
| 2011 Residential Central Air Conditioners and Heat Pumps 76 FR 37408 (June 27, 2011); 76 FR 67037 (Oct. 31, 2011). | 2015 | $26.0M (2009$).** |
| 2010 Gas Fired and Electric Storage Water Heaters 75 FR 20112 (April 16, 2010) | 2015 | $95.4M (2009$). |
| Walk-in Coolers and Freezers 79 FR 32050 (June 3, 2014) | 2017 | $33.6M (2012$). |
| Dishwashers*** | 2018 | TBD. |
| Commercial Warm-Air Furnaces*** | 2018 | TBD. |
| Commercial Packaged Air Conditioners and Heat Pumps*** 79 FR 58948 (September 18, 2014) | 2019 | $226.4M (2013$). |
| Furnace Fans 79 FR 38130 (July 3, 2014) | 2019 | $40.6M (2013$). |
| Packaged Terminal Air Conditioners and Heat Pumps*** 79 FR 55538 (September 16, 2014) | 2019 | $14.3M (2013$). |
| Miscellaneous Residential Refrigeration*** | 2019 | TBD. |
| Commercial Water Heaters*** | 2019 | TBD. |
| Commercial Packaged Boilers*** | 2020 | TBD. |
| Residential Water Heaters*** | 2021 | TBD. |
| Clothes Dryers*** | 2022 | TBD. |
| Central Air Conditioners*** | 2022 | TBD. |
| Room Air Conditioners*** | 2022 | TBD. |

*Conversion expenses for manufacturers of oil-fired furnaces and gas-fired and oil-fired boilers associated with the November 2007 final rule for residential furnaces and boilers are excluded from this figure. The 2011 direct final rule for residential furnaces sets a higher standard and earlier compliance date for oil-fired furnaces than the 2007 final rule. As a result, manufacturers will be required to design the 2011 direct final rule standard. The conversion costs associated with the 2011 direct final rule are listed separately in this table. EISA 2007 legislated higher standards and earlier compliance dates for residential boilers than were in the November 2007 final rule. As a result, gas-fired and oil-fired boiler manufacturers were required to design to the EISA 2007 standard beginning in 2012. The conversion costs listed for residential gas-fired and oil-fired boilers in the November 2007 residential furnaces and boilers final rule analysis are not included in this figure.

**Estimated industry conversion expense and approximate compliance date reflect a court-ordered April 24, 2014 remand of the residential non-weatherized and mobile home gas furnaces standards set in the 2011 Energy Conservation Standards for Residential Furnaces and Residential Central Air Conditioners and Heat Pumps. The costs associated with this rule reflect implementation of the amended standards for the remaining furnace product classes (*i.e.,* oil-fired furnaces).

***The final rule for this energy conservation standard has not been published. The compliance date and analysis of conversion costs have not been finalized at this time. (If a value is provided for total industry conversion expense, this value represents an estimate from the NOPR.)

Additionally, manufacturers cited increasing ENERGY STAR standards for room air conditioners and packaged terminal air conditioners as a source of regulatory burden. In response, the Department does not consider ENERGY STAR in its presentation of cumulative regulatory burden, because ENERGY STAR is a voluntary program and is not Federally mandated.

3. National Impact Analysis

a. Significance of Energy Savings

For each TSL, DOE projected energy savings for SPVUs purchased in the 30-year period that begins in the year of compliance with amended standards (2015–2044 for the ASHRAE level and 2019–2048 for higher efficiency levels). The savings are measured over the entire lifetime of equipment purchased in the 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the ASHRAE base case. DOE also compared the energy consumption of SPVUs under the ASHRAE Standard 90.1–2013 efficiency levels to energy consumption of SPVUs under the EPCA base case (*i.e.,* the current Federal standard).

Table V.11 presents the estimated primary energy savings for the ASHRAE level and for each considered TSL, and Table V.12 presents the estimated FFC energy savings. The approach is further described in section IV.G.1. As mentioned previously, NES (and NPV) were not calculated for equipment classes with no shipments.

TABLE V.11—CUMULATIVE NATIONAL PRIMARY ENERGY SAVINGS FOR SPVU TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2015–2044 (ASHRAE) OR 2019–2048 (HIGHER)

| | ASHRAE baseline | Trial standard level | | | |
|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 |
| | *quads** | | | | |
| SPVAC <65,000 Btu/h | 0.14 | 0.06 | 0.13 | 0.21 | 0.23 |
| SPVHP <65,000 Btu/h | 0.07 | 0.04 | 0.10 | 0.15 | 0.16 |
| SPVAC ≥65,000 Btu/h to <135,000 Btu/h | 0.01 | ..... | ..... | ..... | ..... |
| Total—All Classes | 0.22 | 0.09 | 0.22 | 0.36 | 0.39 |

* All energy savings from TSLs above the ASHRAE Standard 90.1–2013 level are calculated with those ASHRAE levels as a baseline.
**Note:** Components may not sum to total due to rounding.

TABLE V.12—CUMULATIVE NATIONAL FULL-FUEL-CYCLE ENERGY SAVINGS FOR SPVU TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2015–2044 (ASHRAE) OR 2019–2048 (HIGHER)

| | ASHRAE baseline | Trial standard level | | | |
|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 |
| | *quads** | | | | |
| SPVAC <65,000 Btu/h | 0.15 | 0.06 | 0.13 | 0.22 | 0.24 |
| SPVHP <65,000 Btu/h | 0.07 | 0.04 | 0.10 | 0.15 | 0.16 |
| SPVAC ≥65,000 Btu/h to <135,000 Btu/h | 0.01 | ..... | ..... | ..... | ..... |
| Total—All Classes | 0.22 | 0.09 | 0.23 | 0.37 | 0.39 |

* All energy savings from TSLs above the ASHRAE Standard 90.1–2013 level are calculated with those ASHRAE levels as a baseline.
**Note:** Components may not sum to total due to rounding.

Circular A–4 requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs.[105] Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using nine rather than 30 years of product shipments. The choice of a nine -year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[106] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing

[105] U.S. Office of Management and Budget, ''Circular A–4: Regulatory Analysis'' (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

[106] EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. (42 U.S.C. 6313(a)(6)(C)) While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some consumer products, the compliance period is 5 years rather than 3 years.

cycles, or other factors specific to SPVUs. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES results based on a nine-year analytical period are presented in Table V.13. The impacts are counted over the lifetime of products purchased in 2015–2023 for the ASHRAE level and for 2019–2027 for higher levels.

TABLE V.13—CUMULATIVE NATIONAL PRIMARY ENERGY SAVINGS FOR SPVU TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2015–2023 (ASHRAE) OR 2019–2027 (HIGHER)

| | ASHRAE baseline | Trial standard level | | | |
|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 |
| | *quads** | | | | |
| SPVAC <65,000 Btu/h | 0.04 | 0.01 | 0.03 | 0.06 | 0.07 |
| SPVHP <65,000 Btu/h | 0.01 | 0.01 | 0.02 | 0.04 | 0.05 |
| SPVAC ≥65,000 Btu/h to <135,000 Btu/h | 0.00 | ..... | ..... | ..... | ..... |
| Total—All Classes | 0.06 | 0.02 | 0.05 | 0.10 | 0.11 |

* All energy savings from TSLs above the ASHRAE Standard 90.1–2013 level are calculated with those ASHRAE levels as a baseline.
**Note:** Components may not sum to total due to rounding.

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for SPVUs. In accordance with OMB's guidelines on regulatory analysis,[107] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.14 shows the consumer NPV results for each TSL considered for SPVUs using the ASHRAE baseline. In each case, the impacts cover the lifetime of equipment purchased in 2019–2048. DOE conducted all economic analyses relative to the ASHRAE baseline; because the ASHRAE level is max-tech for classes greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h, DOE did not include results for these classes in the NPV tables. Results for all equipment classes using the EPCA baseline can be found in chapter 10 of the NOPR TSD.

TABLE V.14—CUMULATIVE NET PRESENT VALUE OF CUSTOMER BENEFIT FOR SPVU TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2019–2048

| Equipment class | *Discount rate (%)* | Trial standard level | | | |
|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 |
| | *billion 2013$** | | | | |
| SPVAC <65,000 Btu/h | 3 | 0.13 | 0.13 | (0.64) | (1.05) |
| | 7 | 0.04 | 0.01 | (0.38) | (0.66) |
| SPVHP <65,000 Btu/h | 3 | 0.13 | 0.32 | 0.14 | (0.06) |
| | 7 | 0.04 | 0.10 | 0.01 | (0.12) |
| Total—All Classes | 3 | 0.26 | 0.44 | (0.50) | (1.10) |
| | 7 | 0.09 | 0.11 | (0.37) | (0.78) |

* Numbers in parentheses indicate negative NPV.
**Note:** Components may not sum to total due to rounding.

The NPV results based on the aforementioned nine-year analytical period are presented in Table V.15. The impacts are counted over the lifetime of products purchased in 2019–2027. As mentioned previously, this information is presented for informational purposes only and is not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.15—CUMULATIVE NET PRESENT VALUE OF CUSTOMER BENEFIT FOR SPVU TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2019–2027

| Equipment class | *Discount rate (%)* | Trial standard level | | | |
|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 |
| | *billion 2013$** | | | | |
| SPVAC <65,000 Btu/h | 3 | 0.06 | 0.09 | (0.04) | (0.34) |
| | 7 | 0.02 | 0.03 | (0.08) | (0.30) |

[107] OMB Circular A–4, section E (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4*).

TABLE V.15—CUMULATIVE NET PRESENT VALUE OF CUSTOMER BENEFIT FOR SPVU TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2019–2027—Continued

| Equipment class | Discount rate (%) | Trial standard level | | | |
|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 |
| SPVHP <65,000 Btu/h | 3 | 0.05 | 0.09 | 0.14 | (0.01) |
| | 7 | 0.02 | 0.04 | 0.05 | (0.05) |
| Total—All Classes | 3 | 0.10 | 0.19 | 0.09 | (0.35) |
| | 7 | 0.05 | 0.08 | (0.03) | (0.36) |

* Numbers in parentheses indicate negative NPV.
**Note:** Components may not sum to total due to rounding.

The results presented in this section reflect an assumption of no change in SPVU prices over the forecast period. In addition, DOE conducted sensitivity analysis using alternative price trends: one in which prices decline over time, and one in which prices increase. These price trends, and the associated NPV results, are described in appendix 10B of the NOPR TSD.

c. Indirect Impacts on Employment

DOE expects energy conservation standards for SPVUs to reduce energy costs for equipment owners, with the resulting net savings being redirected to other forms of economic activity. Those shifts in spending and economic activity could affect the demand for labor. As described in section IV.M, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term time frames (2019–2023), where these uncertainties are reduced.

The results suggest that these proposed standards would be likely to have negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents more detailed results about anticipated indirect employment impacts.

4. Impact on Utility or Performance of Equipment

DOE has tentatively concluded that the amended standards it is proposing in this NOPR would not lessen the utility or performance of SPVUs.

5. Impact of Any Lessening of Competition

DOE has also considered any lessening of competition that is likely to result from new and amended standards. The Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6313(a)(6)(B)(ii)(V))

To assist the Attorney General in making such a determination, DOE has provided DOJ with copies of this notice and the TSD for review. DOE will consider DOJ's comments on the proposed rule in preparing the final rule, and DOE will publish and respond to DOJ's comments in that document.

6. Need of the Nation To Conserve Energy

An improvement in the energy efficiency of the products subject to this rule is likely to improve the security of the nation's energy system by reducing overall demand for energy. Reduced electricity demand may also improve the reliability of the electricity system. Reductions in national electric generating capacity estimated for each considered TSL are reported in chapter 15 of the NOPR TSD.

Energy savings from amended standards for the SPVU equipment classes covered in the NOPR could also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. Table V.16 provides DOE's estimate of cumulative emissions reductions projected to result from the TSLs considered in this rulemaking using the ASHRAE baseline, while results using the EPCA baseline can be found in chapter 13 of the NOPR TSD. The table includes both power sector emissions and upstream emissions. The upstream emissions were calculated using the multipliers discussed in section IV.G. DOE reports annual $CO_2$, $NO_X$, and Hg emissions reductions for each TSL in chapter 13 of the NOPR TSD. As discussed in section IV.J, DOE did not include $NO_X$ emissions reduction from power plants in States subject to CAIR, because an energy conservation standard would not affect the overall level of $NO_X$ emissions in those States due to the emissions caps mandated by CSAPR.

TABLE V.16—CUMULATIVE EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR SPVUS

| | TSL | | | |
|---|---|---|---|---|
| | 1 | 2 | 3 | 4 |
| **Power Sector and Site Emissions*** | | | | |
| $CO_2$ *(million metric tons)* | 8.0 | 20 | 32 | 34 |
| $SO_2$ (*thousand tons*) | 22 | 53 | 86 | 90 |
| $NO_X$ *(thousand tons)* | 3.6 | 8.9 | 14 | 14 |
| Hg (*tons*) | 0.03 | 0.06 | 0.10 | 0.11 |
| $N_2O$ (*thousand tons*) | 0.11 | 0.27 | 0.44 | 0.46 |
| $CH_4$ (*thousand tons*) | 0.60 | 1.4 | 2.4 | 2.5 |

TABLE V.16—CUMULATIVE EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR SPVUS—Continued

| | TSL | | | |
|---|---|---|---|---|
| | 1 | 2 | 3 | 4 |
| **Upstream Emissions** | | | | |
| $CO_2$ *(million metric tons)* | 0.28 | 0.68 | 1.1 | 1.2 |
| $SO_2$ (*thousand tons*) | 0.06 | 0.15 | 0.24 | 0.26 |
| $NO_X$ *(thousand tons)* | 3.9 | 9.4 | 16 | 17 |
| Hg (*tons)* | 0.0002 | 0.0004 | 0.0006 | 0.0006 |
| $N_2O$ (*thousand tons*) | 0.003 | 0.007 | 0.011 | 0.012 |
| $CH_4$ (*thousand tons*) | 24 | 57 | 94 | 101 |
| **Total Emissions** | | | | |
| $CO_2$ *(million metric tons)* | 8.3 | 20 | 33 | 35 |
| $SO_2$ (*thousand tons*) | 22 | 53 | 86 | 91 |
| $NO_X$ *(thousand tons)* | 7.4 | 18 | 30 | 31 |
| Hg (*tons)* | 0.03 | 0.06 | 0.11 | 0.11 |
| $N_2O$ (*thousand tons*) | 0.11 | 0.28 | 0.45 | 0.47 |
| $CH_4$ (*thousand tons*) | 24 | 59 | 97 | 103 |

* Includes emissions from additional gas use of more-efficient SPVUs.

**Note:** These results are based on emissions factors in *AEO 2013,* the most recent version available at the time of this analysis. Use of emissions factors in *AEO 2014* would result in a significant decrease in cumulative emissions reductions for $CO_2$, estimated at 33%, and an increase in $NO_X$, estimated at 13%. In the next phase of this rulemaking, DOE plans to use emissions factors based on the most recent *AEO* available, which may or may not be *AEO 2014,* depending on the timing of the issuance of the next rulemaking document.

As part of the analysis for this NOPR, DOE estimated monetary benefits likely to result from the reduced emissions of $CO_2$ and $NO_X$ estimated for each of the TSLs considered for SPVUs. As discussed in section IV.K, for $CO_2$, DOE used values for the SCC developed by an interagency process. The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets are based on the average SCC from three integrated assessment models, at discount rates of 2.5 percent, 3 percent, and 5 percent. The fourth set, which represents the 95th-percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The four SCC values for $CO_2$ emissions reductions in 2015, expressed in 2013$, are $12.0/ton, $40.5/ton, $62.4/ton, and $119/ton. The values for later years are higher due to increasing emissions-related costs as the magnitude of projected climate change increases.

Table V.17 presents the global value of $CO_2$ emissions reductions at each TSL using the ASHRAE baseline, while results using the EPCA baseline are available in chapter 14 of the NOPR TSD. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values, and these results are presented in chapter 14 of the NOPR TSD for both the ASHRAE and EPCA baselines.

TABLE V.17—GLOBAL PRESENT VALUE OF $CO_2$ EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR SPVUS

| TSL | SCC Scenario* | | | |
|---|---|---|---|---|
| | million 2013$ | | | |
| | 5% discount rate, average | 3% discount rate, average | 2.5% discount rate, average | 3% discount rate, 95th percentile |
| **Power Sector and Site Emissions** ** | | | | |
| 1 | 50 | 241 | 386 | 747 |
| 2 | 120 | 584 | 937 | 1812 |
| 3 | 202 | 969 | 1552 | 3006 |
| 4 | 216 | 1035 | 1656 | 3209 |
| **Upstream Emissions** | | | | |
| 1 | 1.8 | 8.5 | 14 | 26 |
| 2 | 4.3 | 21 | 33 | 64 |
| 3 | 7.2 | 34 | 55 | 107 |
| 4 | 7.8 | 37 | 59 | 114 |
| **Total Emissions** | | | | |
| 1 | 52 | 249 | 400 | 773 |
| 2 | 124 | 605 | 970 | 1875 |
| 3 | 209 | 1003 | 1607 | 3112 |
| 4 | 224 | 1072 | 1715 | 3324 |

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.0, $40.5, $62.4 and $119 per metric ton (2013$).[108]

** Includes site emissions associated with additional use of natural gas by more-efficient SPVUs.

DOE is well aware that scientific and economic knowledge about the contribution of $CO_2$ and other greenhouse gas (GHG) emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed in this rulemaking on reducing $CO_2$ emissions is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in $CO_2$ and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this NOPR the most recent values and analyses resulting from the interagency review process.

DOE also estimated a range for the cumulative monetary value of the economic benefits associated with $NO_X$ emissions reductions anticipated to result from amended standards for the SPVU equipment that is the subject of this NOPR. The dollar-per-ton values that DOE used are discussed in section IV.K. Table V.18 presents the present value of cumulative $NO_X$ emissions reductions for each TSL using the ASHRAE baseline calculated using the average dollar-per-ton values and 7-percent and 3-percent discount rates. Results using the EPCA baseline are available in chapter 14 of the NOPR TSD.

TABLE V.18—PRESENT VALUE OF $NO_X$ EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR SPVUS [109]

| TSL | million 2013$ | |
|---|---|---|
| | 3% Discount rate | 7% Discount rate |
| **Power Sector and Site Emissions **** | | |
| 1 | 3.6 | 1.0 |
| 2 | 9.1 | 2.6 |
| 3 | 15 | 4.2 |
| 4 | 15 | 4.3 |
| **Upstream Emissions** | | |
| 1 | 4.8 | 2.0 |
| 2 | 11 | 4.7 |
| 3 | 19 | 8.2 |
| 4 | 21 | 9.0 |
| **Total Emissions** | | |
| 1 | 8.4 | 3.0 |
| 2 | 21 | 7.3 |
| 3 | 34 | 12 |
| 4 | 36 | 13 |

* Includes site emissions associated with additional use of natural gas by more-efficient SPVUs.

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V.19 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced $CO_2$ and $NO_X$ emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL considered in this rulemaking using the ASHRAE baseline, at both a 7-percent and a 3-percent discount rate. The $CO_2$ values used in the columns of each table correspond to the four scenarios for the valuation of $CO_2$ emission reductions discussed above.

TABLE V.19—SPVU TSLS: NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM $CO_2$ AND $NO_X$ EMISSIONS REDUCTIONS

| TSL | Consumer NPV at 3% discount rate added with: | | | |
|---|---|---|---|---|
| | SCC Value of $12.0/metric ton $CO_2$* and medium value for $NO_X$** | SCC Value of $40.5/metric ton $CO_2$* and medium value for $NO_X$** | SCC Value of $62.4/metric ton $CO_2$* and medium value for $NO_X$** | SCC Value of $119/metric ton $CO_2$* and medium value for $NO_X$** |
| 1 | 0.32 | 0.52 | 0.67 | 1.0 |
| 2 | 0.59 | 1.1 | 1.4 | 2.3 |
| 3 | (0.26) | 0.54 | 1.1 | 2.6 |
| 4 | (0.84) | 0.005 | 0.65 | 2.3 |
| 1 | 0.14 | 0.34 | 0.49 | 0.86 |

[108] These results are based on emissions factors in *AEO 2013,* the most recent version available at the time of this analysis. Use of emissions factors in *AEO 2014* would result in a significant decrease in cumulative emissions reductions for $CO_2$, estimated at 33%. The monetized benefits from GHG reductions would likely change by a comparable amount. In the next phase of this rulemaking, DOE plans to use emissions factors based on the most recent *AEO* available, which may or may not be *AEO 2014,* depending on the timing of the issuance of the next rulemaking document.

[109] These results are based on emissions factors in *AEO 2013,* the most recent version available at the time of this analysis. Use of emissions factors in *AEO 2014* would result in an increase in $NO_X$ emissions reductions, estimated at 13%. The monetized benefits from $NO_X$ reductions would likely change by a comparable amount. In the next phase of this rulemaking, DOE plans to use emissions factors based on the most recent *AEO* available, which may or may not be *AEO 2014,* depending on the timing of the issuance of the next rulemaking document.

TABLE V.19—SPVU TSLS: NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM $CO_2$ AND $NO_X$ EMISSIONS REDUCTIONS—Continued

| TSL | Consumer NPV at 3% discount rate added with: | | | |
|---|---|---|---|---|
| | SCC Value of $12.0/metric ton $CO_2$* and medium value for $NO_X$** | SCC Value of $40.5/metric ton $CO_2$* and medium value for $NO_X$** | SCC Value of $62.4/metric ton $CO_2$* and medium value for $NO_X$** | SCC Value of $119/metric ton $CO_2$* and medium value for $NO_X$** |
| 2 | 0.24 | 0.72 | 1.1 | 2.0 |
| 3 | (0.15) | 0.65 | 1.3 | 2.8 |
| 4 | (0.54) | 0.31 | 0.95 | 2.6 |

[1] Billion 2013$.
**Note:** Parentheses indicate negative values.
* These label values represent the global SCC in 2015, in 2013$. The present values have been calculated with scenario-consistent discount rates.[110]
** Medium Value corresponds to $2,684 per ton of $NO_X$ emissions.

Although adding the value of consumer savings to the values of emission reductions provides a valuable perspective, two issues should be considered. First, the national operating cost savings are domestic U.S. customer monetary savings that occur as a result of market transactions, while the value of $CO_2$ reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2019–2048. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one metric ton of $CO_2$ in each year. These impacts continue well beyond 2100.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) No other factors were considered in this analysis.

*C. Proposed Standards*

EPCA contains criteria for prescribing new or amended energy conservation standards. For commercial HVAC equipment such as SPVUs, DOE must adopt as national standards the levels in amendments to ASHRAE Standard 90.1 unless DOE determines, supported by clear and convincing evidence, that standards more stringent than those levels ''would result in significant additional conservation of energy and [be] technologically feasible and economically justified.'' (42 U.S.C. 6313(a)(6)(A)(ii)(II)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6313(a)(6)(B)(ii))

In this rulemaking, DOE has evaluated whether standards more stringent than the efficiency levels in ASHRAE Standard 90.1–2013 for SPVUs are justified under the above criteria. As stated in sections III.C.1 and III.D.2, DOE has tentatively determined, based on clear and convincing evidence, that all of the more-stringent standard levels considered in this rulemaking are technologically feasible and would save significant additional amounts of energy. For this NOPR, DOE considered the impacts of amended standards for SPVUs at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next-most-efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader in understanding the benefits and/or burdens of each TSL, tables in this section summarize the quantitative analytical results for each TSL, based on the assumptions and methodology discussed herein. The efficiency levels contained in each TSL are described in section V.A. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard, and impacts on employment. Section V.B.1.b presents the estimated impacts of each TSL for these subgroups. DOE discusses the impacts on direct employment in SPVU manufacturing in section V.B.2.b, and discusses the indirect employment impacts in section V.B.3.c.

1. Benefits and Burdens of Trial Standard Levels Considered for SPVUs

Table V.20, Table V.21, and Table V.22 summarize the quantitative impacts estimated for each TSL for SPVUs using the ASHRAE baseline. The national impacts are measured over the lifetime of SPVUs purchased in the 30-year period that begins in the year of compliance with amended standards (2019–2048). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. Results for the proposed standard level using the EPCA baseline can be found in Tables V.24 through V.28.

[110] These results are based on emissions factors in *AEO 2013,* the most recent version available at the time of this analysis. Use of emissions factors in *AEO 2014* would result in a significant decrease in cumulative emissions reductions for $CO_2$, estimated at 33%, and in increase in cumulative emissions reductions for $NO_X$, estimated at 13%. The monetized benefits from GHG reductions would likely change by a comparable amount. In the next phase of this rulemaking, DOE plans to use emissions factors based on the most recent *AEO* available, which may or may not be *AEO 2014,* depending on the timing of the issuance of the next rulemaking document.

[111] These results are based on emissions factors in *AEO 2013,* the most recent version available at the time of this analysis. Use of emissions factors in *AEO 2014* would result in a significant change in cumulative emissions reductions for $CO_2$ and most other pollutants. For example, the estimated change for $CO_2$ emissions reductions is a decrease of 33%, while the estimated change for $NO_X$ emissions reductions is an increase of 13%. The monetized benefits from GHG reductions would likely change by a comparable amount. In the next phase of this rulemaking, DOE plans to use emissions factors based on the most recent *AEO* available, which may or may not be *AEO 2014,* depending on the timing of the issuance of the next rulemaking document.

TABLE V.20—SUMMARY OF ANALYTICAL RESULTS FOR SPVUS: NATIONAL IMPACTS [111]

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
|---|---|---|---|---|
| National Energy Savings *quads* | 0.09 | 0.23 | 0.37 | 0.39. |
| **NPV of Customer Benefits (2013$ billion)** | | | | |
| 3% discount rate | 0.26 | 0.44 | (0.50) | (1.10). |
| 7% discount rate | 0.09 | 0.11 | (0.37) | (0.78). |
| **Cumulative Emissions Reduction (Total FFC Emissions)** | | | | |
| $CO_2$ *(million metric tons)* | 8.3 | 20 | 33 | 35. |
| $SO_2$ (*thousand tons*) | 22 | 53 | 86 | 91. |
| $NO_X$ *(thousand tons)* | 7.4 | 18 | 30 | 31. |
| Hg (*tons)* | 0.03 | 0.06 | 0.11 | 0.11. |
| $N_2O$ (*thousand tons*) | 0.11 | 0.28 | 0.45 | 0.47. |
| $CH_4$ (*thousand tons*) | 24 | 59 | 97 | 103. |
| **Value of Emissions Reduction (Total FFC Emissions)** | | | | |
| $CO_2$ (2013$ million)* | 52 to 773 | 124 to 1875 | 209 to 3112 | 224 to 3324. |
| $NO_X$—3% discount rate (*2013$ million*) | 8.4 | 21 | 34 | 36 |
| $NO_X$—7% discount rate (*2013$ million*) | 3.0 | 7.3 | 12 | 13. |

* Range of the economic value of $CO_2$ reductions is based on estimates of the global benefit of reduced $CO_2$ emissions.
**Note:** Parentheses indicate negative values.

TABLE V.21—NPV OF CONSUMER BENEFITS BY EQUIPMENT CLASS

| Equipment class | Discount rate (%) | Trial Standard Level | | | |
|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 |
| SPVAC | 3 | 0.13 | 0.13 | (0.64) | (1.05) |
| <65,000 Btu/h | 7 | 0.04 | 0.01 | (0.38) | (0.66) |
| SPVHP | 3 | 0.13 | 0.32 | 0.14 | (0.06) |
| <65,000 Btu/h | 7 | 0.04 | 0.10 | 0.01 | (0.12) |
| Total—All Classes | 3 | 0.26 | 0.44 | (0.50) | (1.10) |
| | 7 | 0.09 | 0.11 | (0.37) | (0.78) |

[1] Billion 2013$.
**Note:** Parentheses indicate negative values.

TABLE V.22—SUMMARY OF ANALYTICAL RESULTS FOR SPVUS: MANUFACTURER AND CONSUMER IMPACTS

[ASHRAE baseline]

| | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
|---|---|---|---|---|
| **Manufacturer Impacts** | | | | |
| Industry NPV relative to a base case value of 36.5 (2013$ millions) | 32.4 to 34.2 | 33.2 to 38.0 | 27.5 to 49.2 | 3.0 to 47.4 |
| Industry NPV (% change) | (11.3) to (6.3) | (9.0) to 4.1 | (24.7) to 34.9 | (91.7) to 29.9 |
| **Consumer Mean LCC Savings (2013$)** | | | | |
| SPVAC <65,000 Btu/h | 116 | 179 | (24) | (825) |
| SPVHP <65,000 Btu/h | 358 | 424 | 819 | (177) |
| **Consumer Median PBP (years)** | | | | |
| SPVAC <65,000 Btu/h | 7.9 | 8.4 | 14.4 | 27.3 |
| SPVHP <65,000 Btu/h | 4.1 | 4.8 | 6.2 | 13.6 |
| **Distribution of Consumer LCC Impacts** | | | | |
| SPVAC <65,000 Btu/h: | | | | |
| Net Cost (%) | 25 | 37 | 62 | 87 |
| Net Benefit (%) | 49 | 62 | 38 | 13 |
| No Impact (%) | 26 | 1 | 0 | 0 |
| SPVHP <65,000 Btu/h: | | | | |
| Net Cost (%) | 0 | 1 | 7 | 68 |
| Net Benefit (%) | 74 | 98 | 92 | 32 |

TABLE V.22—SUMMARY OF ANALYTICAL RESULTS FOR SPVUS: MANUFACTURER AND CONSUMER IMPACTS—Continued
[ASHRAE baseline]

| | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
|---|---|---|---|---|
| No Impact (%) | 26 | 1 | 0 | 0 |

**Note:** Parentheses indicate negative values.

First, DOE considered TSL 4, which would save an estimated total of 0.39 quads of energy, an amount DOE considers significant. TSL 4 has an estimated NPV of customer benefit of negative $0.78 billion using a 7-percent discount rate, and negative $1.10 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 4 are 35 million metric tons of $CO_2$, 31 thousand tons of $NO_X$, and 0.11 tons of Hg. The estimated monetary value of the $CO_2$ emissions reductions at TSL 4 ranges from $224 million to $3,324 million.[112]

At TSL 4, the average LCC savings ranges from a negative $825 to a negative $177 depending on equipment class. The fraction of consumers with positive LCC benefits range from 13 percent for SPVACs less than 65,000 Btu/h to 32 percent for SPVHPs less than 65,000 Btu/h.

At TSL 4, the projected change in INPV ranges from a decrease of $33.4 million to an increase of $10.9 million. At TSL 4, DOE recognizes the risk of negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the lower bound of the range of impacts is reached, as DOE expects, TSL 4 could result in a net loss of up to 91.7 percent in INPV for manufacturers.

Accordingly, the Secretary tentatively concludes that at TSL 4 for SPVUs, the benefits of energy savings, emission reductions, and the estimated monetary value of the $CO_2$ emissions reductions would be outweighed by negative NPV of consumer benefit overall, negative LCC savings for both equipment classes (SPVAC and SPVHP less than 65,000 Btu/h), and the significant burden on the industry. Consequently, DOE has concluded that TSL 4 is not economically justified.

Next, DOE considered TSL 3, which would save an estimated total of 0.37 quads of energy, an amount DOE considers significant. TSL 3 has an estimated NPV of consumer benefit of negative $0.37 billion using a 7-percent discount rate, and negative $0.50 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 3 are 33 million metric tons of $CO_2$, 30 thousand tons of $NO_X$, and 0.11 tons of Hg. The estimated monetary value of the $CO_2$ emissions reductions at TSL 3 ranges from $209 million to $3,112 million.[113]

At TSL 3, the average LCC savings are range from a negative $24 to a positive $819 depending on equipment class. The fraction of consumers with positive LCC benefits ranged from 38 percent for SPVACs less than 65,000 Btu/h to 92 percent for SPVHPs less than 65,000 Btu/h.

At TSL 3, the projected change in INPV ranges from a decrease of $9.0 million to an increase of $12.7 million. If the lower bound of the range of impacts is reached, TSL 3 could result in a net loss of up to 24.7 percent in INPV for manufacturers.

Accordingly, the Secretary tentatively concludes that at TSL 3 for SPVUs, the benefits of energy savings, emission reductions, and the estimated monetary value of the $CO_2$ emissions reductions would be outweighed by the negative NPV of consumer benefits, negative LCC savings for SPVAC less than 65,000 Btu/h, and the negative INPV on manufacturers. Consequently, DOE has tentatively concluded that TSL 3 is not economically justified.

Next, DOE considered TSL 2, which would save an estimated total of 0.23 quads of energy, an amount DOE considers significant. TSL 2 has an estimated NPV of consumer benefit of $0.11 billion using a 7-percent discount rate, and $0.44 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 2 are 20 million metric tons of $CO_2$, 18 thousand tons of $NO_X$, and 0.06 tons of Hg. The estimated monetary value of the $CO_2$ emissions reductions at TSL 3 ranges from $124 million to $1,875 million.[114]

At TSL 2, the average LCC savings range from $179 to $424 depending on equipment class. The fraction of consumers with positive LCC benefits range from 62 percent for SPVACs less than 65,000 Btu/h to 98 percent for SPVHPs less than 65,000 Btu/h.

At TSL 2, the projected change in INPV ranges from a decrease of $3.3 million to an increase of $1.5 million. At TSL 2, DOE recognizes the risk of negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the lower bound of the range of impacts is reached, as DOE expects, TSL 2 could result in a net loss of up to 9.0 percent in INPV for manufacturers.

After considering the analysis and weighing the benefits and the burdens, DOE has tentatively concluded that at TSL 2 for SPVUs, the benefits of energy savings, positive NPV of consumer benefit, positive average consumer LCC savings, emission reductions, and the estimated monetary value of the emissions reductions would outweigh the potential reduction in INPV for manufacturers. The Secretary of Energy has tentatively concluded that TSL 2 would save a significant amount of energy, is technologically feasible and economically justified, and is supported by clear and convincing evidence. For the above reasons, DOE proposes to

[112] These results are based on emissions factors in *AEO 2013,* the most recent version available at the time of this analysis. Use of emissions factors in *AEO 2014* would result in a significant change in cumulative emissions reductions for $CO_2$ and most other pollutants. For example, the estimated change for $CO_2$ emissions reductions is a decrease of 33%, while the estimated change for $NO_X$ emissions reductions is an increase of 13%. The monetized benefits from GHG reductions would likely change by a comparable amount. In the next phase of this rulemaking, DOE plans to use emissions factors based on the most recent *AEO* available, which may or may not be *AEO 2014,* depending on the timing of the issuance of the next rulemaking document.

[113] These results are based on emissions factors in *AEO 2013,* the most recent version available at the time of this analysis. Use of emissions factors in *AEO 2014* would result in a significant change in cumulative emissions reductions for $CO_2$ and most other pollutants. For example, the estimated change for $CO_2$ emissions reductions is a decrease of 33%, while the estimated change for $NO_X$ emissions reductions is an increase of 13%. The monetized benefits from GHG reductions would likely change by a comparable amount. In the next phase of this rulemaking, DOE plans to use emissions factors based on the most recent *AEO* available, which may or may not be *AEO 2014,* depending on the timing of the issuance of the next rulemaking document.

[114] These results are based on emissions factors in *AEO 2013,* the most recent version available at the time of this analysis. Use of emissions factors in *AEO 2014* would result in a significant change in cumulative emissions reductions for $CO_2$ and most other pollutants. For example, the estimated change for $CO_2$ emissions reductions is a decrease of 33%, while the estimated change for $NO_X$ emissions reductions is an increase of 13%. The monetized benefits from GHG reductions would likely change by a comparable amount. In the next phase of this rulemaking, DOE plans to use emissions factors based on the most recent *AEO* available, which may or may not be *AEO 2014,* depending on the timing of the issuance of the next rulemaking document.

adopt the energy conservation standards for SPVUs at TSL 2. Table V.23 presents the proposed energy conservation standards for SPVUs. As mentioned previously, for SPVHPs greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h and for SPVUs greater than or equal to 135,000 Btu/h and less than 240,000 Btu/h, there are no models on the market, and, therefore, DOE had no basis with which to develop higher efficiency levels or conduct analyses. For SPVACs greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h, there are no models on the market higher than the ASHRAE 90.1–2013 level, and, therefore, DOE has no clear and convincing evidence with which to adopt higher levels.

As a result, DOE is proposing amended standards for SPVUs equivalent to those in ASHRAE Standard 90.1–2013 for these four equipment classes, as required by law.

TABLE V.23—PROPOSED ENERGY CONSERVATION STANDARDS FOR SPVUS

| Equipment class | Cooling capacity Btu/h | Efficiency level |
|---|---|---|
| Single Package Vertical Air Conditioner | <65,000 Btu/h | EER =11.0. |
| Single Package Vertical Air Conditioner | ≥65,000 Btu/h and <135,000 Btu/h | EER = 10.0. |
| Single Package Vertical Air Conditioner | ≥135,000 Btu/h and <240,000 Btu/h | EER = 10.0. |
| Single Package Vertical Heat Pump | <65,000 Btu/h | EER = 11.0.<br>COP = 3.3. |
| Single Package Vertical Heat Pump | ≥65,000 Btu/h and <135,000 Btu/h | EER = 10.0.<br>COP = 3.0. |
| Single Package Vertical Heat Pump | ≥135,000 Btu/h and <240,000 Btu/h | EER = 10.0.<br>COP = 3.0. |

Table V.24 through Table V.28 present the benefits and burdens on the consumer, the manufacturer, and the Nation in comparison to a base case including the current Federal standards (*i.e.,* the EPCA baseline), although only the incremental quantitative impacts from the ASHRAE baseline to the various TSL standard levels under consideration was used to propose these standards. The results compared to the ASHRAE baseline are also included for comparison.

TABLE V.24—CONSUMER IMPACT RESULTS FOR SPVU PROPOSED TRIAL STANDARD LEVEL

[Baseline Comparison]

| Equipment class | Baseline | Life-cycle cost, all customers *2013$* | | | Life-cycle cost savings | | | | Median payback period *years* |
|---|---|---|---|---|---|---|---|---|---|
| | | Installed cost | Discounted operating cost | LCC | Affected customers' average savings *2013$* | % of Consumers that experience | | | |
| | | | | | | Net cost | No impact | Net benefit | |
| SPVAC <65 kBtu/h | ASHRAE | 5,083 | 11,839 | 16,922 | 179 | 37 | 1 | 62 | 8.4 |
| | EPCA | 5,083 | 11,839 | 16,922 | 261 | 42 | 1 | 57 | 10.4 |
| SPVHP <65 kBtu/h | ASHRAE | 5,695 | 29,618 | 35,313 | 424 | 1 | 1 | 98 | 4.8 |
| | EPCA | 5,695 | 29,618 | 35,313 | 382 | 21 | 1 | 78 | 9.3 |
| SPVAC 65–135 kBtu/h | ASHRAE | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| | EPCA | 6,659 | 19,805 | 26,464 | 737 | 16 | 29 | 55 | 7.0 |
| SPVHP 65–135 kBtu/h | ASHRAE | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| | EPCA | 7,409 | 56,078 | 63,487 | 241 | 34 | 29 | 37 | 10.9 |

TABLE V.25—MANUFACTURER IMPACT ANALYSIS RESULTS FOR SPVU PROPOSED TRIAL STANDARD LEVEL

[Baseline Comparison]

| | ASHRAE baseline | EPCA baseline |
|---|---|---|
| Base Case INPV (2013$ millions) | 36.5 | 33.9. |
| Standards Case INPV (2013$ millions) | 33.2 to 38.0 | 24.0 to 40.2. |
| Change in INPV (% Change) | (9.0) to 4.1 | (29.2) to 18.6. |

TABLE V.26—CUMULATIVE NATIONAL PRIMARY AND FULL-FUEL-CYCLE ENERGY SAVINGS AND NET PRESENT VALUE OF CUSTOMER BENEFIT FOR SPVU PROPOSED TRIAL STANDARD LEVEL FOR UNITS SOLD IN 2019–2048

[Baseline Comparison]

| | National primary energy savings (quads) | | National FFC energy savings (quads) | | NPV at 3% (billion 2013$) | | NPV at 7% (billion 2013$) | |
|---|---|---|---|---|---|---|---|---|
| | ASHRAE baseline | EPCA baseline | ASHRAE baseline | EPCA baseline | ASHRAE baseline | EPCA baseline | ASHRAE baseline | EPCA baseline |
| SPVAC <65,000 Btu/h | 0.13 | 0.28 | 0.13 | 0.28 | 0.13 | 0.51 | 0.01 | 0.10 |
| SPVHP <65,000 Btu/h | 0.10 | 0.17 | 0.10 | 0.17 | 0.32 | 0.53 | 0.10 | 0.15 |
| SPVAC ≥65,000 Btu/h to <135,000 Btu/h | ..... | 0.01 | ..... | 0.01 | ..... | 0.02 | ..... | 0.01 |
| Total—All Classes | 0.22 | 0.45 | 0.23 | 0.46 | 0.44 | 1.07 | 0.11 | 0.26 |

**Note:** Components may not sum to total due to rounding.

TABLE V.27—CUMULATIVE EMISSIONS REDUCTION, GLOBAL PRESENT VALUE OF $CO_2$ EMISSIONS REDUCTION, AND PRESENT VALUE OF $NO_X$ EMISSIONS REDUCTION FOR PROPOSED STANDARDS FOR SPVUS

[Baseline Comparison]

| | Power sector and site emissions* | | Upstream emissions | | Total emissions | |
|---|---|---|---|---|---|---|
| | ASHRAE baseline | EPCA baseline | ASHRAE baseline | EPCA baseline | ASHRAE baseline | EPCA baseline |
| **Cumulative Emissions Reductions** | | | | | | |
| $CO_2$ (*million metric tons*) | 20 | 40 | 0.68 | 1.4 | 20 | 41 |
| $SO_2$ (*thousand tons*) | 53 | 107 | 0.15 | 0.30 | 53 | 108 |
| $NO_X$ (*thousand tons*) | 8.9 | 18 | 9.4 | 19 | 18 | 37 |
| Hg (*tons*) | 0.06 | 0.13 | 0.0004 | 0.0007 | 0.06 | 0.13 |
| $N_2O$ (*thousand tons*) | 0.27 | 0.55 | 0.007 | 0.014 | 0.28 | 0.56 |
| $CH_4$ (*thousand tons*) | 1.4 | 3.0 | 57 | 116 | 59 | 119 |
| **Global Present Value of $CO_2$ Emissions Reduction, SCC Scenario** (million 2013$)** | | | | | | |
| 5% discount rate, average | 120 | 247 | 4.3 | 8.8 | 124 | 256 |
| 3% discount rate, average | 584 | 1194 | 21 | 42 | 605 | 1236 |
| 2.5% discount rate, average | 937 | 1914 | 33 | 67 | 970 | 1982 |
| 3% discount rate, 95th percentile | 1812 | 3704 | 64 | 131 | 1875 | 3834 |
| **Present Value of $NO_X$ Emissions Reduction (million 2013$)** | | | | | | |
| 3% discount rate | 9.1 | 18 | 11 | 24 | 21 | 42 |
| 7% discount rate | 2.6 | 5.3 | 4.7 | 9.7 | 7.3 | 15 |

* Includes site emissions associated with additional use of natural gas by more-efficient SPVUs.
** For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.0, $40.5, $62.4 and $119 per metric ton (2013$).

TABLE V.28—SPVU PROPOSED TSL: NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM $CO_2$ AND $NO_X$ EMISSIONS REDUCTIONS

[Baseline Comparison]

| | SCC Value of $12.0/metric ton $CO_2$* and medium value for $NO_X$** | | SCC Value of $40.5/metric ton $CO_2$* and medium value for $NO_X$** | | SCC Value of $62.4/metric ton $CO_2$* and medium value for $NO_X$** | | SCC Value of $119/metric ton $CO_2$* and medium value for $NO_X$** | |
|---|---|---|---|---|---|---|---|---|
| | ASHRAE baseline | EPCA baseline | ASHRAE baseline | EPCA baseline | ASHRAE baseline | EPCA baseline | ASHRAE baseline | EPCA baseline |
| billion 2013$ | | | | | | | | |
| Consumer NPV at 3% Discount Rate added with each SCC and $NO_X$ value | 0.59 | 1.4 | 1.1 | 2.3 | 1.4 | 3.1 | 2.3 | 4.9 |
| Consumer NPV at 7% Discount Rate added with each SCC and $NO_X$ value | 0.24 | 0.53 | 0.72 | 1.5 | 1.1 | 2.3 | 2.0 | 4.1 |

**Note**: Parentheses indicate negative values.

* These label values represent the global SCC in 2015, in 2013$. The present values have been calculated with scenario-consistent discount rates.

** Medium Value corresponds to $2,684 per ton of $NO_X$ emissions.

2. Summary of Benefits and Costs (Annualized) of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized monetary values are the sum of: (1) The annualized national economic value, expressed in 2013$, of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs, which is another way of representing consumer NPV), and (2) the monetary value of the benefits of emission reductions, including $CO_2$ emission reductions.[115] The value of the $CO_2$ reductions, otherwise known as the Social Cost of Carbon (SCC), is calculated using a range of values per metric ton of $CO_2$ developed by a recent interagency process.

Although combining the values of operating savings and $CO_2$ reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of $CO_2$ reductions is based on a global value. Second, the assessments of operating cost savings and SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2019–2048. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one metric ton of $CO_2$ in each year. These impacts continue well beyond 2100.

Table V.29 shows the annualized values for the proposed standards for SPVUs compared to the ASHRAE baselines. The results under the primary estimate are as follows. (All monetary values below are expressed in 2013$.) Using a 7-percent discount rate for benefits and costs other than $CO_2$ reduction, for which DOE used a 3-percent discount rate along with the SCC series corresponding to a value of $40.5/ton in 2015, the cost of the SPVU standards proposed in the NOPR is $29 million per year in increased equipment costs, while the benefits are $38 million per year in reduced equipment operating costs, $29 million in $CO_2$ reductions, and $0.57 million in reduced $NO_X$ emissions. In this case, the net benefit amounts to $38 million per year. Using a 3-percent discount rate for all benefits and costs and the SCC series corresponding to a value of $40.5/ton in 2015, the cost of the SPVU standards proposed in the NOPR is $37 million per year in increased equipment costs, while the benefits are $58 million per year in reduced operating costs, $29 million in $CO_2$ reductions, and $0.97 million in reduced $NO_X$ emissions. In this case, the net benefit amounts to $51 million per year.[116]

TABLE V.29—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS (TSL 2) FOR SPVUS

| | Discount rate | million 2013$/year | | |
|---|---|---|---|---|
| | | Primary estimate* | Low net benefits estimate* | High net benefits estimate* |
| Benefits: | | | | |
| Operating Cost Savings | 7% | 38 | 36 | 39 |
| | 3% | 58 | 55 | 61 |
| $CO_2$ Reduction Monetized Value ($12.0/t case)** | 5% | 7.7 | 7.6 | 7.7 |
| $CO_2$ Reduction Monetized Value ($40.5/t case)** | 3% | 29 | 28 | 29 |
| $CO_2$ Reduction Monetized Value ($62.4/t case)** | 2.5% | 43 | 42 | 43 |
| $CO_2$ Reduction Monetized Value $119/t case)** | 3% | 89 | 88 | 89 |
| $NO_X$ Reduction at $2,684/ton** | 7% | 0.57 | 0.56 | 0.57 |
| | 3% | 0.97 | 0.97 | 0.98 |
| Total Benefits† | 7% plus $CO_2$ range | 46 to 127 | 44 to 125 | 48 to 129 |
| | 7% | 67 | 65 | 69 |
| | 3% plus $CO_2$ range | 67 to 148 | 63 to 144 | 70 to 151 |
| | 3% | 88 | 84 | 91 |
| Costs: | | | | |
| Incremental Equipment Costs | 7% | 29 | 40 | 28 |
| | 3% | 37 | 53 | 36 |
| Net Benefits/Costs: | | | | |
| Total: | 7% plus $CO_2$ range | 17 to 98 | 4 to 85 | 19 to 101 |
| | 7% | 38 | 25 | 40 |
| | 3% plus $CO_2$ range | 30 to 111 | 11 to 91 | 34 to 115 |

[115] DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2014, the year used for discounting the NPV of total consumer costs and savings, for the time-series of costs and benefits using discount rates of 3 and 7 percent for all costs and benefits except for the value of $CO_2$ reductions. For the latter, DOE used a range of discount rates. From the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in 2013 that yields the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined would be a steady stream of payments.

[116] All $CO_2$ and $NO_X$ results shown in this paragraph are based on emissions factors in *AEO 2013*, the most recent version available at the time of this analysis. Use of emissions factors in *AEO 2014* would result in a significant decrease in cumulative emissions reductions for $CO_2$, estimated at 33%, and an increase in cumulative $NO_X$ reductions, estimated at 13%. In the next phase of this rulemaking, DOE plans to use emissions factors based on the most recent *AEO* available, which may or may not be *AEO 2014*, depending on the timing of the issuance of the next rulemaking document.

TABLE V.29—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS (TSL 2) FOR SPVUS—Continued

| | Discount rate | million 2013$/year | | |
|---|---|---|---|---|
| | | Primary estimate* | Low net benefits estimate* | High net benefits estimate* |
| | 3% | 51 | 31 | 55 |

* This table presents the annualized costs and benefits associated with SPVUs shipped in 2019–2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019–2048. Costs incurred by manufacturers, some of which may be incurred in preparation for the rule, are not directly included, but are indirectly included as part of incremental equipment costs. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices and building growth from the *AEO 2013* Reference case, Low Estimate, and High Estimate, respectively. In addition, incremental equipment costs reflect constant real prices for the Primary Estimate, an increase for projected equipment price trends for the Low Benefits Estimate, and a decline for projected equipment price trends for the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.F.2.a.

** The $CO_2$ values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios. The values of $12.0, $40.5, and $62.4 per metric ton are the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The value of $119/t represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series used by DOE incorporate an escalation factor. The value for $NO_X$ (in 2013$) is the average of the low and high values used in DOE's analysis.[117]

† Total benefits for both the 3-percent and 7-percent cases are derived using the series corresponding to SCC value of $40.5/t. In the rows labeled "7% plus $CO_2$ range" and "3% plus $CO_2$ range," the operating cost and $NO_X$ benefits are calculated using the labeled discount rate, and those values are added to the full range of $CO_2$ values.

## VI. Procedural Issues and Regulatory Review

### *A. Review Under Executive Orders 12866 and 13563*

Section 1(b)(1) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that the proposed standards address are as follows:

(1) There are external benefits resulting from improved energy efficiency of SPVUs that are not captured by the users of such equipment. These benefits include externalities related to environmental protection and energy security that are not reflected in energy prices, such as reduced emissions of greenhouse gases. DOE attempts to quantify some of the external benefits through use of Social Cost of Carbon values.

In addition, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has determined that this regulatory action is a "significant regulatory action" under Executive Order 12866. DOE has also prepared a regulatory impact analysis (RIA) for the proposed rule.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that the NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*www.energy.gov/gc/office-general-counsel*).

DOE has determined that it cannot certify that the proposed rule, if promulgated, would not have a significant effect on a substantial number of small manufacturers. Therefore, DOE has prepared an initial regulatory flexibility analysis (IRFA), as presented in sections VI.B.1 through VI.B.4, for this rulemaking.

[117] All $CO_2$ and $NO_X$ results shown in this paragraph are based on emissions factors in *AEO 2013,* the most recent version available at the time of this analysis. Use of emissions factors in *AEO 2014* would result in a significant decrease in cumulative emissions reductions for $CO_2$, estimated at 33%, and an increase in cumulative $NO_X$ reductions, estimated at 13%. In the next phase of this rulemaking, DOE plans to use emissions factors based on the most recent *AEO* available, which may or may not be *AEO 2014,* depending on the timing of the issuance of the next rulemaking document.

1. Description and Estimated Number of Small Entities Regulated

For manufacturers of SPVUs, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/content/table-small-business-size-standards.* SPVU manufacturing is classified under NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' The SBA sets a threshold of 750 employees or less for an entity to be considered as a small business for this category.

DOE reviewed the proposed energy conservation standards for SPVUs considered in the notice of proposed rulemaking under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. 68 FR 7990. To better assess the potential impacts of this rulemaking on small entities, DOE conducted a more focused inquiry of the companies that could be small business manufacturers of equipment covered by this rulemaking. DOE used available public information to identify potential small manufacturers. DOE's research involved industry trade association membership directories (including AHRI), the DOE certification database, individual company Web sites, and marketing research tools (*e.g.,* Hoovers reports) to create a list of companies that manufacture or sell SPVU systems covered by this rulemaking. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at previous DOE public meetings. DOE reviewed the publicly-available data and contacted companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of SPVU equipment. DOE screened out companies that did not offer equipment covered by this rulemaking, did not meet the definition of a ''small business,'' or are foreign-owned and operated.

DOE identified seven companies that produce equipment covered under the single package vertical unit energy conservation standard rulemaking. Two of the seven companies are foreign-owned and operated. Of the remaining five businesses, two companies met the SBA definition of a ''small business.'' One small business manufacturer has the largest market share in the SPVU industry and 48 percent of the active listings in the AHRI Directory.[118] The other has a more modest market share and 5 percent of active listings in the AHRI Directory.

2. Description and Estimate of Compliance Requirements

At the time of analysis, the domestic small manufacturer with the large market share had 229 active listings. Fifty-four of those listings, or 24 percent, would meet the proposed standards. The other 76 percent of the listings would not meet the proposed standard. The small manufacturer would need to either redesign those products or drop those products and move their customers to more-efficient offerings. However, DOE notes that the small manufacturer had more product listings than any other manufacturer that could meet the proposed standard.

The domestic small manufacturer with the smaller market share had 27 active listings. None of those listings would meet the proposed standards. At the proposed standard level, this manufacturer would need to redesign its entire product offering or leave the SPVU market.

If small manufacturers chose to redesign their products that do not meet the proposed standard, they would need to make capital conversion and product conversion investments. DOE estimated an average total conversion cost of $1.49 million per manufacturer. DOE expects this investment, which is roughly 12% of an average manufacturer's annual revenue, to be made over the four-year period between the publication of the final rule and the effective date of the standard. Since small businesses may have a greater difficulty obtaining credit or may obtain less favorable terms than larger businesses, the small manufacturers may face higher overall costs if they choose to finance the conversion costs resulting from the change in standard.

DOE notes that the small manufacturer with the larger market share produces more SPVU units than its larger competitors. The company could potentially spread the conversion costs over a larger number of units than its competitors. However, the small manufacturer did express concern in MIA interviews that such an effort would tie up their available engineering resources and prevent them from focusing on technology advancements and customer-driven feature requests. Larger manufacturers, which do not have the same shipment volumes as the small manufacturer, may have fewer engineers dedicated to SPVU equipment but potentially could marshal engineering and testing resources across their organization. The concern about adequate availability of engineering resources would also likely apply to the small manufacturer with the smaller market share.

Smaller manufacturers generally pay higher prices for purchased parts, such as BPMs, relative to larger competitors. Even the small manufacturer with the larger market share, and the highest number of SPVU shipments of any manufacturer in the industry, could pay higher prices for component than the larger competition. If their competitors have centralized sourcing, those companies could combine component purchases for SPVU product lines with purchases for other non-SPVU product lines and obtain higher volume discounts than those available to small manufacturers.

Due to the potential conversion costs, the potential engineering and testing effort, and the potential increases in component prices that result from a standard, DOE conducted this regulatory flexibility analysis. Based on DOE's analysis, including interviews with manufacturers, the Department believes one of the identified small businesses would be able to meet the proposed standard. That small manufacturer has the strong market share, technical expertise, and the production capability to meet the amended standard. The company successfully competes in both the current baseline-efficiency and premium-efficiency market segments. The other small business has significantly less market share and does not compete in the premium-efficiency market today. Given the lack of existing product that meets the standard, potential conversion costs, and disadvantages in financing costs as well as in pricing for sourced components, the second small business may face headwinds in meeting the proposed standard.

[118] Based on model listings in the AHRI directory accessed on June 6, 2012 (Available at: *http://www.ahridirectory.org/ahridirectory/pages/ac/defaultSearch.aspx*).

3. Duplication, Overlap, and Conflict with Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered.

4. Significant Alternatives to the Rule

The discussion in section VI.B.2 analyzes impacts on small businesses that would result from DOE's proposed rule. In addition to the other TSLs being considered, the proposed rulemaking TSD includes a regulatory impact analysis (RIA). For SPVUs, the RIA discusses the following policy alternatives: (1) No change in standard; (2) consumer rebates; (3) consumer tax credits; (4) manufacturer tax credits; (5) voluntary energy efficiency targets; (6) early replacement; and (7) bulk government purchases. While these alternatives may mitigate to some varying extent the economic impacts on small entities compared to the standards, DOE determined that the energy savings of these regulatory alternatives are from 0.01 to 0.5 percent smaller than those that would be expected to result from adoption of the proposed standard levels. Thus, DOE rejected these alternatives and is proposing the standards set forth in this rulemaking. (See chapter 17 of the NOPR TSD for further detail on the policy alternatives DOE considered.)

*C. Review Under the Paperwork Reduction Act of 1995*

Manufacturers of single package vertical air conditioners and single package vertical heat pumps must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the applicable DOE test procedures for SPVACs and SPVHPs, including any amendments adopted for those test procedures on the date that compliance is required. DOE has established regulations for the certification and recordkeeping requirements for all covered customer products and commercial equipment, including SPVACs and SPVHPs. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB Control Number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

*D. Review Under the National Environmental Policy Act of 1969*

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. *See* 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and Appendix B, B(1)–(5). The proposed rule fits within the category of actions because it is a rulemaking that establishes energy conservation standards for customer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://cxnepa.energy.gov/.*

*E. Review Under Executive Order 13132*

Executive Order 13132, ''Federalism,'' imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (August 10, 1999). The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA (42 U.S.C. 6297). Therefore, Executive Order 13132 requires no further action.

*F. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

*G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the

private sector, of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/gc/office-general-counsel.*

Although the proposed rule, which proposes amended energy conservation standards for SPVUs, does not contain a Federal intergovernmental mandate, it may require annual expenditures of $100 million or more by the private sector. Specifically, the proposed rule would likely result in a final rule that could require expenditures of $100 million or more, including: (1) Investment in research and development and in capital expenditures by SPVUs manufacturers in the years between the final rule and the compliance date for the amended standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency SPVUs, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of the NOPR and the ''Regulatory Impact Analysis'' section of the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. 2 U.S.C. 1535(a). DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6313(a), the proposed rule would establish amended energy conservation standards for SPVUs that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the TSD for the proposed rule.

*H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*I. Review Under Executive Order 12630*

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

*J. Review Under the Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*K. Review Under Executive Order 13211*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which sets forth proposed energy conservation standards for SPVUs, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

*L. Review Under the Information Quality Bulletin for Peer Review*

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and

analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *energy.gov/eere/buildings/peer-review.*

## VII. Public Participation

### *A. Attendance at the Public Meeting*

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this proposed rule. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *foreignvisit@ee.doe.gov* so that the necessary procedures can be completed. Please also note that any person wishing to bring a laptop computer into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=107.* Participants are responsible for ensuring their systems are compatible with the webinar software.

### *B. Procedure for Submitting Requests to Speak and Prepared General Statements for Distribution*

Any person who has an interest in the topics addressed in this notice, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this proposed rule between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or email to: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov.* Persons who wish to speak should include with their request a computer diskette or CD–ROM in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons scheduled to make an oral presentation to submit an advance copy of their statements at least one week before the public meeting. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Program. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

### *C. Conduct of the Public Meeting*

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this proposed rule and will be accessible on the DOE Web site. In addition, any person may buy a copy of the transcript from the transcribing reporter.

### *D. Submission of Comments*

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this proposed rule.

*Submitting comments via www.regulations.gov.* The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want

to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

*Submitting comments via email, hand delivery/courier, or mail.* Comments and documents submitted via email, hand delivery, or mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

### *E. Issues on Which DOE Seeks Comment*

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE seeks comment on its tentative conclusion that the creation of a space-constrained equipment class for SPVUs is not warranted. (See section III.B.1 of this preamble for additional information.)

2. DOE seeks comment on the EER and COP pairings for SPVHPs and its method of deriving the pairings. (See section IV.C.1 of this preamble for additional information.)

3. DOE requests comment on its elimination of technologies from consideration based upon the criteria using in the screening analysis. (See section IV.B of the preamble for additional information.)

4. DOE seeks comment as to whether switching to a BPM motor at 10 EER represents the most probable option of achieving that efficiency level for manufacturers. (See section IV.C.2 of this preamble for additional information.)

5. DOE seeks comment on its derivation of the cost efficiency curves for SPVHPs and SPVACs with a cooling capacity ≥65,000 Btu/h and <135,000 Btu/h. (See section IV.C.5 of this preamble for additional information.)

6. DOE seeks input on its analysis of market channels for the SPVU equipment classes. (See section IV.D of this preamble for additional information.)

7. DOE seeks input on its analysis of unit energy consumption (UEC) for the above equipment classes and its use in establishing the energy savings potential for more-stringent standards. Of a particular interest to DOE is input on shipments of SPVHP equipment to telecommunication shelters and the frequency of use of economizers in equipment serving these shelters. (See section IV.E of this preamble for additional information.)

8. DOE also recognizes that there may be regional differences between the shipments of heat pumps and air conditioners to warmer or cooler climates, and requests stakeholder input on how or if such differences can be taken into account in the energy use characterization. (See section IV.E of this preamble for additional information.)

9. DOE requests comments on the most appropriate trend to use for real (inflation-adjusted) SPVU prices. (See section IV.F.2.a of this preamble for additional information.)

10. DOE seeks comments on its assumption that installation costs would not increase for higher-efficiency SPVUs. (See section IV.F.2.b of this preamble for additional information.)

11. DOE seeks comment on whether a rebound effect should be included in the determination of annual energy savings. If a rebound effect should be included, DOE seeks data to assist in calculation of the rebound effect. (See section IV.G.1.a of this preamble for additional information.)

12. DOE seeks comment on whether amended standards would affect shipments, and if so, DOE also requests data with which to estimate the elasticity of shipments for SPVUs as a function of first costs, repair costs, or operating costs. (See section IV.G.2 of this preamble for additional information.)

## VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

## List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 10, 2014.

**David T. Danielson,**

*Assistant Secretary of Energy, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, DOE proposes to amend part 431 of Chapter II, Subchapter D, of Title 10 of the Code of Federal Regulations as set forth below:

## PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

■ 2. Section 431.97 is amended by:

■ a. Revising paragraph (d); and

■ b. Redesignating Table 7 in paragraph (e) as Table 9, and Table 8 in paragraph (f) as Table 10;

The revisions read as follows:

### § 431.97 Energy efficiency standards and their compliance dates.

* * * * *

(d)(1) Each single package vertical air conditioner and single package vertical heat pump manufactured on or after January 1, 2010, but before October 9, 2015 (for models ≥65,000 Btu/h and <135,000 Btu/h) or October 9, 2016 (for models ≥135,000 Btu/h and <240,000 Btu/h), must meet the applicable minimum energy conservation standard level(s) set forth in Table 6 of this section.

TABLE 6 TO § 431.97—MINIMUM EFFICIENCY STANDARDS FOR SINGLE PACKAGE VERTICAL AIR CONDITIONERS AND SINGLE PACKAGE VERTICAL HEAT PUMPS

| Equipment type | Cooling capacity | Sub-category | Efficiency level | Compliance date: products manufactured on and after . . . |
|---|---|---|---|---|
| Single package vertical air conditioners and single package vertical heat pumps, single-phase and three-phase. | <65,000 Btu/h | AC | EER = 9.0 | January 1, 2010. |
| | | HP | EER = 9.0<br>COP = 3.0 | January 1, 2010. |
| Single package vertical air conditioners and single package vertical heat pumps. | ≥65,000 Btu/h and <135,000 Btu/h | AC | EER = 8.9 | January 1, 2010. |
| | | HP | EER = 8.9<br>COP = 3.0 | January 1, 2010. |
| Single package vertical air conditioners and single package vertical heat pumps. | ≥135,000 Btu/h and <240,000 Btu/h | AC | EER = 8.6 | January 1, 2010. |
| | | HP | EER = 8.6<br>COP = 2.9 | January 1, 2010. |

(2) Each single package vertical air conditioner and single package vertical heat pump manufactured on and after October 9, 2015 (for models ≥65,000 Btu/h and <135,000 Btu/h) or October 9, 2016 (for models ≥135,000 Btu/h and <240,000 Btu/h), but before [*date 4 years after publication of a final rule*] must meet the applicable minimum energy conservation standard level(s) set forth in Table 7 of this section.

TABLE 7 TO § 431.97—MINIMUM EFFICIENCY STANDARDS FOR SINGLE PACKAGE VERTICAL AIR CONDITIONERS AND SINGLE PACKAGE VERTICAL HEAT PUMPS

| Equipment type | Cooling capacity | Sub-category | Efficiency level | Compliance date: products manufactured on and after . . . |
|---|---|---|---|---|
| Single package vertical air conditioners and single package vertical heat pumps, single-phase and three-phase. | <65,000 Btu/h | AC | EER = 9.0 | January 1, 2010. |
| | | HP | EER = 9.0<br>COP = 3.0 | January 1, 2010. |
| Single package vertical air conditioners and single package vertical heat pumps. | ≥65,000 Btu/h and <135,000 Btu/h | AC | EER = 10.0 | October 9, 2015. |
| | | HP | EER = 10.0<br>COP = 3.0 | October 9, 2015. |
| Single package vertical air conditioners and single package vertical heat pumps. | ≥135,000 Btu/h and <240,000 Btu/h | AC | EER = 10.0 | October 9, 2016. |
| | | HP | EER = 10.0<br>COP = 3.0 | October 9, 2016. |

(3) Each single package vertical air conditioner and single package vertical heat pump manufactured on and after [*date 4 years after publication of a final rule*] must meet the applicable minimum energy conservation standard level(s) set forth in Table 8 of this section.

TABLE 8 TO § 431.97—UPDATED MINIMUM EFFICIENCY STANDARDS FOR SINGLE PACKAGE VERTICAL AIR CONDITIONERS AND SINGLE PACKAGE VERTICAL HEAT PUMPS

| Equipment type | Cooling capacity | Sub-category | Efficiency level | Compliance date: products manufactured on and after . . . |
|---|---|---|---|---|
| Single package vertical air conditioners and single package vertical heat pumps, single-phase and three-phase. | <65,000 Btu/h | AC | EER = 11.0 | [*Date 4 years after publication of final rule*]. |
| | | HP | EER = 11.0<br>COP = 3.3 | [*Date 4 years after publication of final rule*]. |
| Single package vertical air conditioners and single package vertical heat pumps. | ≥65,000 Btu/h and <135,000 Btu/h | AC | EER = 10.0 | October 9, 2015. |
| | | HP | EER = 10.0<br>COP = 3.0 | October 9, 2015. |
| Single package vertical air conditioners and single package vertical heat pumps. | ≥135,000 Btu/h and <240,000 Btu/h | AC | EER = 10.0 | October 9, 2016. |
| | | HP | EER = 10.0<br>COP = 3.0 | October 9, 2016. |

* * * * *

[FR Doc. 2014–29865 Filed 12–29–14; 8:45 am]

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# FEDERAL REGISTER

Vol. 79 Tuesday,

No. 249 December 30, 2014


Part IV

## The President

Proclamation 9223—To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes

Federal Register
Vol. 79, No. 249
Tuesday, December 30, 2014

# Presidential Documents

**Title 3—**

## The President

**Proclamation 9223 of December 23, 2014**

## To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes

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

**A Proclamation**

1. In Proclamation 8921 of December 20, 2012, I determined that the Republic of Guinea-Bissau (Guinea-Bissau) was not making continual progress in meeting the requirements described in section 506A(a)(1) of the Trade Act of 1974 (the 1974 Act) (19 U.S.C. 2466a(a)(1)), as added by section 111(a) of the African Growth and Opportunity Act (title I of Public Law 106–200) (AGOA). Thus, pursuant to section 506A(a)(3) of the 1974 Act (19 U.S.C. 2466a(a)(3)), I terminated the designation of Guinea-Bissau as a beneficiary sub-Saharan African country for purposes of section 506A of the 1974 Act.

2. Section 506A(a)(1) of the 1974 Act authorizes the President to designate a country listed in section 107 of the AGOA (19 U.S.C. 3706) as a beneficiary sub-Saharan African country if the President determines that the country meets the eligibility requirements set forth in section 104 of the AGOA (19 U.S.C. 3703), as well as the eligibility criteria set forth in section 502 of the 1974 Act (19 U.S.C. 2462).

3. Pursuant to section 506A(a)(1) of the 1974 Act, based on actions that the Government of Guinea-Bissau has taken over the past year, I have determined that Guinea-Bissau meets the eligibility requirements set forth in section 104 of the AGOA and section 502 of the 1974 Act, and I have decided to designate Guinea-Bissau as a beneficiary sub-Saharan African country.

4. In Proclamation 8921 of December 20, 2012, I designated the Republic of South Sudan (South Sudan) as a beneficiary sub-Saharan African country for purposes of section 506A(a)(1) of the 1974 Act. In Proclamation 7657 of March 28, 2003, the President designated the Republic of The Gambia (The Gambia) as a beneficiary sub-Saharan African country for purposes of section 506A(a)(1) of the 1974 Act.

5. Section 506A(a)(3) of the 1974 Act (19 U.S.C. 2466a(a)(3)), authorizes the President to terminate the designation of a country as a beneficiary sub-Saharan African country for purposes of section 506A, if he determines that the country is not making continual progress in meeting the requirements described in section 506A(a)(1) of the 1974 Act.

6. Pursuant to section 506A(a)(3) of the 1974 Act, I have determined that South Sudan and The Gambia are not making continual progress in meeting the requirements described in section 506A(a)(1) of the 1974 Act. Accordingly, I have decided to terminate the designation of South Sudan and The Gambia as beneficiary sub-Saharan African countries for purposes of section 506A of the 1974 Act, effective on January 1, 2015.

7. On April 22, 1985, the United States and Israel entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (USIFTA), which the Congress approved in the United States-Israel Free Trade Area Implementation Act of 1985 (the ''USIFTA Act'') (19 U.S.C. 2112 note).

8. Section 4(b) of the USIFTA Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties, as the President determines to be required or appropriate to carry out the USIFTA.

9. In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel, on July 27, 2004, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products during the period January 1, 2004, through December 31, 2008 (the ''2004 Agreement'').

10. In Proclamation 7826 of October 4, 2004, consistent with the 2004 Agreement, the President determined, pursuant to section 4(b) of the USIFTA Act, that, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, it was necessary to provide duty-free access into the United States through December 31, 2008, for specified quantities of certain agricultural products of Israel.

11. Each year from 2008 through 2013, the United States and Israel entered into agreements to extend the period that the 2004 Agreement was in force for 1-year periods to allow additional time for the two governments to conclude an agreement to replace the 2004 Agreement.

12. To carry out the extension agreements, the President in Proclamation 8334 of December 31, 2008; Proclamation 8467 of December 23, 2009; Proclamation 8618 of December 21, 2010; Proclamation 8770 of December 29, 2011; Proclamation 8921 of December 20, 2012; and Proclamation 9072 of December 23, 2013, modified the Harmonized Tariff Schedule of the United States (HTS) to provide duty-free access into the United States for specified quantities of certain agricultural products of Israel, each time for an additional 1-year period.

13. On December 5, 2014, the United States entered into an agreement with Israel to extend the period that the 2004 Agreement is in force through December 31, 2015, to allow for further negotiations on an agreement to replace the 2004 Agreement.

14. Pursuant to section 4(b) of the USIFTA Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through the close of December 31, 2015, for specified quantities of certain agricultural products of Israel.

15. Section 1205(a) of the Omnibus Trade and Competitiveness Act of 1988 (the ''1988 Act'') (19 U.S.C. 3005(a)), directs the United States International Trade Commission (the Commission) to keep the HTS under continuous review and periodically to recommend to the President such modifications to the HTS as the Commission considers necessary or appropriate to accomplish the purposes set forth in that subsection. Among those purposes are to promote the uniform application of the International Convention on the Harmonized Commodity Description and Coding System (the ''Convention'') and to alleviate unnecessary administrative burdens.

16. The Commission conducted an investigation pursuant to section 1205 of the 1988 Act (Investigation No. 1205–10) in order to make certain technical corrections to keep the HTS in conformity with international standards and to make certain reclassifications of chemical products that would alleviate unnecessary administrative burdens.

17. In April 2013, the Commission published the results of Investigation No. 1205–10 pursuant to section 1205 of the 1988 Act (*Recommendations to Modify Chapters 29, 30, 37, and 85 of the Harmonized Tariff Schedule*

*of the United States,* USITC Publication 4392 (corrected August 2013)), recommending specific changes to the HTS. Each of these recommended modifications would have little or no economic effect on any industry in the United States. On August 2, 2013, this report was transmitted to the Congress. The report and layover requirements of section 1206(b) of the 1988 Act (19 U.S.C. 3006(b)), were satisfied as of December 18, 2013.

18. Section 1206(a) of the 1988 Act (19 U.S.C. 3006(a)), authorizes the President to proclaim modifications to the HTS based on recommendations made by the Commission pursuant to section 1205 of the 1988 Act, if he determines that the modifications are in conformity with United States obligations under the Convention and do not run counter to the national economic interest of the United States. I have determined that the modifications to the HTS recommended in USITC Publication 4392, as set forth in Annex II to this proclamation, are in conformity with United States obligations under the Convention and do not run counter to the national economic interest of the United States.

19. Presidential Proclamation 8039 of July 27, 2006, implemented the United States-Bahrain Free Trade Agreement (USBFTA). The proclamation implemented, pursuant to section 201 of the United States-Bahrain Free Trade Agreement Implementation Act (the ''USBFTA Act'') (19 U.S.C. 3805 note), the staged reductions in rates of duty that the President determined to be necessary or appropriate to carry out or apply certain provisions of the USBFTA, including Article 3.2.8. That proclamation incorporated by reference Publication 3830 of the U.S. International Trade Commission, entitled *Modifications to the Harmonized Tariff Schedule of the United States to Implement the United States-Bahrain Free Trade Agreement.* Annex I of Publication 3830 included a technical error that affected the tariff treatment of goods under heading 9914.99.20 after December 31, 2015. I have determined that modifications to the HTS pursuant to section 201(a) of the USBTFA Act are necessary to correct this error.

20. Section 604 of the 1974 Act (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 506A(a)(1) of the 1974 Act, section 506A(a)(3) of the 1974 Act, section 4(b) of the USIFTA Act, section 1206(a) of the 1988 Act, section 201(a) of the USBFTA Act, and section 604 of the 1974 Act, do proclaim that:

(1) Guinea-Bissau is designated as a beneficiary sub-Saharan African country.

(2) In order to reflect this designation in the HTS, general note 16(a) to the HTS is modified by inserting in alphabetical sequence in the list of beneficiary sub-Saharan African countries ''Republic of Guinea-Bissau (Guinea-Bissau).''

(3) The designations of South Sudan and The Gambia as beneficiary sub-Saharan African countries for purposes of section 506A of the 1974 Act are terminated, effective on January 1, 2015.

(4) In order to reflect in the HTS that beginning on January 1, 2015, South Sudan and The Gambia shall no longer be designated as beneficiary sub-Saharan African countries, general note 16(a) to the HTS is modified by deleting ''Republic of South Sudan'' and ''Republic of The Gambia'' from the list of beneficiary sub-Saharan African countries. Note 7(a) to subchapter II and note 1 to subchapter XIX of chapter 98 of the HTS are modified to delete ''The Gambia'' from the list of beneficiary countries. Further, note 2(d) to subchapter XIX of chapter 98 of the HTS is modified

by deleting ''The Gambia'' from the list of lesser developed beneficiary sub-Saharan African countries.

(5) In order to implement U.S. tariff commitments under the 2004 Agreement through December 31, 2015, the HTS is modified as provided in Annex I to this proclamation.

(6)(a) The modifications to the HTS set forth in Annex I to this proclamation shall be effective with respect to eligible agricultural products of Israel that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2015.

(b) The provisions of subchapter VIII of chapter 99 of the HTS, as modified by Annex I to this proclamation, shall continue in effect through December 31, 2015.

(7) In order to modify the HTS to promote the uniform application of the Convention and to alleviate unnecessary administrative burdens, the HTS is modified as set forth in Annex II to this proclamation.

(8) The modifications to the HTS set forth in Annex II to this proclamation shall be effective with respect to goods that are entered, or withdrawn from warehouse for consumption, on or after the later of January 1, 2015, or the 30th day after publication of this proclamation in the **Federal Register**.

(9) In order to make technical corrections necessary to provide the intended duty treatment under Article 3.2.8 of the USBFTA, the HTS is modified as set forth in Annex III to this proclamation.

(10) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

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

Billing code 3295–F2–P

## ANNEX I

## TEMPORARY EXTENSION OF CERTAIN PROVISIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to eligible agricultural products of Israel which are entered, or withdrawn from warehouse for consumption, on or after January 1, 2015 and before the close of December 31, 2015, subchapter VIII of chapter 99 of the Harmonized Tariff Schedule of the United States is hereby modified as follows:

1. U.S. note 1 to such subchapter is modified by deleting "December 31, 2014" and by inserting in lieu thereof "December 31, 2015".

2. U.S. note 3 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2015 466,000".

3. U.S. note 4 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2015 1,304,000".

4. U.S. note 5 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2015 1,534,000".

5. U.S. note 6 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2015 131,000".

6. U.S. note 7 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2015 707,000".

## ANNEX II

## TO MODIFY THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

A. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the later of January 1, 2015, or the date which is the thirtieth day after the date of publication of this proclamation in the *Federal Register*, the Harmonized Tariff Schedule of the United States (HTS) is hereby modified as follows, with bracketed material provided for ease of use and with new material inserted in the HTS columns entitled "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively:

1. Subheading 3002.10.02 is modified by inserting the words "modified or" after the word "not" in the article description.

2. Subheadings 3702.91.01 through 3702.95.00 are deleted, and the following new subheadings are inserted in lieu thereof:

| | | | | |
|---|---|---|---|---|
| | [Photographic film in rolls, sensitized, unexposed, of any material other than paper, paperboard or textiles; instant print film in rolls, sensitized, unexposed:] | | | |
| | [Other:] | | | |
| "3702.96.00 | Of a width not exceeding 35 mm and of a length not exceeding 30 m | 3.7% | Free (A,AU,BH, CA,CL,CO,E,IL, JO,KR,MA, MX,OM,P,PA, PE,SG) | 25% |
| 3702.97.00 | Of a width not exceeding 35 mm and of a length exceeding 30 m | Free | | 38¢/m$^2$ |
| 3702.98.00 | Of a width exceeding 35 mm | 3.7% | Free (A,AU,BH, CA,CL,CO,E,IL, JO,KR,MA, MX,OM,P,PA, PE,SG) | 25%" |

3. Subheading 8543.70.92 is redesignated as subheading 8543.70.93, and the article description of such redesignated subheading is modified by inserting at the end thereof the phrase "; video

game console controllers which use infrared transmissions to operate or access the various functions and capabilities of the console".

B. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the the later of January 1, 2015, or the thirtieth day after the date of publication of this proclamation in the *Federal Register*, the HTS is further modified as follows, with bracketed material provided for ease of use and with new material inserted in the HTS columns entitled "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively:

1. (a) Subheading 2918.99.05 is modified by deleting from the article description the chemical "1,6-hexanediol bis(3,5-dibutyl-4-hydroxyphenyl)propionate)"; and

(b) The following new subheading 2918.29.06 is inserted in numerical sequence:

| | | | | |
|---|---|---|---|---|
| | [Carboxylic acids with additional oxygen function and their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or or nitrosated derivatives: | | | |
| | [Carboxylic acids with phenol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives:] | | | |
| | [Other:] | | | |
| "2918.29.06 | 1,6-Hexanediol bis(3,5-dibutyl-4-hydroxyphenyl)propionate) .. | 5.8% | Free (A+,AU, CA,CL,CO,D,E, IL,JO,KR,MA, MX,OM,P, PA,PE,SG) | 15.4¢/kg+ 40%" |

2. (a) Subheading 2921.42.36 is modified by deleting from the article description the chemical names "4,4'-Methylenebis(3-chloro-2,6-diethylaniline); 4,4'-Methylenebis(2,6-diisopropylaniline);"; and

(b) Subheading 2921.59.17 is modified by inserting in the article description the chemical names "4,4'-Methylenebis(3-chloro-2,6-diethylaniline);" and "4,4'-Methylenebis(2,6-diisopropylaniline);"

3. (a) Subheading 2933.99.87 is deleted; and

(b) The following new subheading 2933.69.50 is inserted in numerical sequence:

| | | | | |
|---|---|---|---|---|
| | :[Heterocyclic compounds with nitrogen heteroatoms only:] | | | |
| | [Compounds containing an unfused triazine ring (whether or not hydrogenated) in the structure:] | | | |
| "2933.69.50: | Hexamethylenetetramine ..... | 6.3% | Free (A,AU,BH, CA,CL,CO,E, IL,JO,KR,MA, MX,OM,P,PA, PE,SG) | 58%" |

## ANNEX III

## TO MAKE TECHNICAL CORRECTIONS IN CERTAIN PROVISIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods of Bahrain, under the terms of general note 30 to the tariff schedule, the HTS is modified as follows:

1. U.S. note 13 to subchapter XIV of chapter 99 is modified:

(A) By adding, "and in an aggregate quantity for the period from January 1, 2016, through July 31, 2016, inclusive, not to exceed a total quantity of 37,916,667 SME," immediately after the phrase "not to exceed a total quantity of 65 million SME" in the first sentence of such note; and

(B) By deleting "December 31, 2015" from the second to last sentence of such note and by inserting in lieu thereof "July 31, 2016".

[FR Doc. 2014–30727
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Billing code 7020–02–C

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